



COUNTRY OF ORIGIN INFORMATION REPORT

SOUTH AFRICA

9 JULY 2010

COUNTRY OF ORIGIN INFORMATION SERVICE

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Preface

- i This Country of Origin Information Report (COI Report) has been produced by COI Service, United Kingdom Border Agency (UKBA), for use by officials involved in the asylum/human rights determination process. The Report provides general background information about the issues most commonly raised in asylum/human rights claims made in the United Kingdom. The main body of the report includes information available up to 1 June 2010. The 'Latest News' section contains further brief information on events and reports accessed from 2 June 2010 to 9 July 2010. The report was issued on 9 July 2010
- ii The Report is compiled wholly from material produced by a wide range of recognised external information sources and does not contain any UKBA opinion or policy. All information in the Report is attributed, throughout the text, to the original source material, which is made available to those working in the asylum/human rights determination process.
- iii The Report aims to provide a compilation of extracts of the source material identified, focusing on the main issues raised in asylum and human rights applications. It is not intended to be a detailed or comprehensive survey. For a more detailed account, the relevant source documents should be examined directly.
- iv The structure and format of the COI Report reflects the way it is used by UKBA decision makers and appeals presenting officers, who require quick electronic access to information on specific issues and use the contents page to go directly to the subject required. Key issues are usually covered in some depth within a dedicated section, but may also be referred to briefly in several other sections. Some repetition is therefore inherent in the structure of the Report.
- v The information included in this COI Report is limited to that which can be identified from source documents. While every effort is made to cover all relevant aspects of a particular topic, it is not always possible to obtain the information concerned. For this reason, it is important to note that information included in the Report should not be taken to imply anything beyond what is actually stated. For example, if it is stated that a particular law has been passed, this should not be taken to imply that it has been effectively implemented unless stated.
- vi As noted above, the Report is a compilation of extracts produced by a number of reliable information sources. In compiling the Report, no attempt has been made to resolve discrepancies between information provided in different source documents. For example, different source documents often contain different versions of names and spellings of individuals, places and political parties, etc. COI Reports do not aim to bring consistency of spelling, but to reflect faithfully the spellings used in the original source documents. Similarly, figures given in different source documents sometimes vary and these are simply quoted as per the original text. The term 'sic' has been used in this document only to denote incorrect spellings or typographical errors in quoted text; its use is not intended to imply any comment on the content of the material.

- vii The Report is based substantially upon source documents issued during the previous two years. However, some older source documents may have been included because they contain relevant information not available in more recent documents. All sources contain information considered relevant at the time this Report was issued.
- viii This COI Report and the accompanying source material are public documents. All COI Reports are published on the RDS section of the Home Office website and the great majority of the source material for the Report is readily available in the public domain. Where the source documents identified in the Report are available in electronic form, the relevant web link has been included, together with the date that the link was accessed. Copies of less accessible source documents, such as those provided by government offices or subscription services, are available from the COI Service upon request.
- ix COI Reports are published regularly on the top 20 asylum intake countries. COI Key Documents are produced on lower asylum intake countries according to operational need. UKBA officials also have constant access to an information request service for specific enquiries.
- x In producing this COI Report, COI Service has sought to provide an accurate, balanced summary of the available source material. Any comments regarding this Report or suggestions for additional source material are very welcome and should be submitted to UKBA as below.

Country of Origin Information Service

UK Border Agency
Block B, Whitgift Centre
15 Wellesley Road
Croydon, CR9 1AT
United Kingdom

Email: cois@homeoffice.gsi.gov.uk

Website: http://www.homeoffice.gov.uk/rds/country_reports.html

INDEPENDENT ADVISORY GROUP ON COUNTRY INFORMATION

- xi The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Chief Inspector of the UK Border Agency to make recommendations to him about the content of the UKBA's country of origin information material. The IAGCI welcomes feedback on UKBA's COI Reports, COI Key Documents and other country of origin information material. Information about the IAGCI's work can be found on the Chief Inspector's website at <http://www.ociukba.homeoffice.gov.uk>
- xii In the course of its work, the IAGCI reviews the content of selected UKBA COI documents and makes recommendations specific to those documents and of a more general nature. A list of the COI Reports and other documents which have been reviewed by the IAGCI or the Advisory Panel on Country Information (the independent organisation which monitored UKBA's COI material from September 2003 to October 2008) is available at <http://www.ociukba.homeoffice.gov.uk/>

- xiii Please note: it is not the function of the IAGCI to endorse any UKBA material or procedures. Some of the material examined by the Group relates to countries designated or proposed for designation to the Non-Suspensive Appeals (NSA) list. In such cases, the Group's work should not be taken to imply any endorsement of the decision or proposal to designate a particular country for NSA, nor of the NSA process itself.

Independent Advisory Group on Country Information contact details:

Office of the Chief Inspector of the UK Border Agency

5th Floor, Globe House

89 Eccleston Square

London, SW1V 1PN

Email: chiefinspectorukba@iciinspector.gsi.gov.uk

Website: <http://www.ociukba.homeoffice.gov.uk/>

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Latest News

EVENTS IN SOUTH AFRICA, FROM 2 JUNE 2010 TO 9 JULY 2010

The Latest News provides a non-exhaustive selection of significant events since 2 June 2010. Further information may also be available from the list of useful sources below.

- 7 July A Zimbabwean man was left hospitalised after being thrown from a train in Cape Town in an apparently xenophobic attack. "Xenophobic attacks in South Africa are often related to protests against lack of basic services and competition for scarce resources, and these tragically end in loss of life and destruction of property. About three million Zimbabweans alone have fled economic collapse in Zimbabwe to South Africa, the continent's biggest economy, in the past decade." SW Radio Africa, Zimbabwean thrown off train in xenophobic attack in South Africa, 7 July 2010
<http://www.swradioafrica.com/news070710/zimofftrain070710.htm>
Date accessed 9 July 2010
- 2 July A court in South Africa has found the country's former chief of police Jackie Selebi guilty of corruption. Selebi, also a former president of Interpol, was accused of having links to organised crime and accepting bribes worth 1.2m rand (\$156,000, £103,000). But the court found him not guilty of perverting the course of justice. Selebi had denied both charges.
BBC News, South Africa ex-police head Selebi guilty of corruption, 2 July 2010.
<http://news.bbc.co.uk/1/hi/world/africa/10485558.stm>
Date accessed 5 July 2010
- 2 July South Africa is bracing itself for a wave of violence after the World Cup as police numbers are scaled down and anger towards foreigners increases among the country's poorest people. The Consortium for Refugees and Migrants in South Africa reported that growing resentment towards immigrants, who are perceived as taking scarce jobs and resources, is growing.
Independent, South Africa braced for violence after World Cup finals, 2 July 2010.
<http://www.independent.ie/world-news/africa/south-africa-braced-for-violence-after-world-cup-finals-2243159.html?service=Print>
Date accessed 5 July 2010
- 30 June A South African man has been charged with raping a lesbian in a homophobic attack.. A report released in March 2009 suggested that there was a rise in 'corrective rapes' and assaults on lesbians in South Africa. Charity ActionAid said women in Johannesburg and Cape Town were suffering an increase in homophobic attacks and sexual assaults which are seen as a form of punishment or "cure".
Pink News, South African man charged with 'correctional rape' of lesbian, 30 June 2010.
<http://www.pinknews.co.uk/2010/06/30/south-african-man-charged-with-correctional-rape-on-lesbian/>
Date accessed 5 July 2010
- 20 June President Zuma launched a new housing initiative called 'Emerald Sky' aimed at reversing the apartheid housing legacy. The government will provide funds to private developers to build rental homes for low and middle income workers. The government is

- planning to spend 15 billion rand to build around 8,000 new settlements.
The Africa News Net, South Africa launches housing scheme for poor, 20 June 2010.
<http://www.theafricanews.net/story/649940>
Date accessed 5 July 2010
- 20 June Despite threats of xenophobic violence in South Africa soon after the World Cup, the number of Zimbabweans seeking asylum in South Africa continues to increase, according to officials working at the Department of Home Affairs in Pretoria.
The Zimbabwean, 500 Zimbabweans seeking asylum daily in South Africa, 20 June 2010.
http://www.thezimbabwean.co.uk/index.php?option=com_content&view=article&id=31971:500-zimbabweans-seeking-asylum-daily-in-south-africa&catid=52&Itemid=32
Date accessed 5 July 2010
- 18 June A South African study suggests that nurses are able to manage patients on antiretroviral (ARV) therapy as effectively as doctors, supporting the case for “task-shifting” in HIV treatment. It is hoped that task-shifting will assist in the expected increase in those seeking ARV treatment.
IRIN, Study backs nurse-monitored HIV treatment, 18 June 2010.
<http://www.irinnews.org/report.aspx?ReportID=89539>
Date accessed 5 July 2010
- 9 June The Department of Home Affairs announced that South Africa would no longer accept travel documents other than passports – single sheet documents will no longer be recognised. The move, partly introduced to monitor overstayers, will particularly hit travellers from countries such as Zimbabwe, where there are extensive backlogs for full passports.
Business Day, Government bans one-sheet travel documents, 9 June 2010.
<http://allafrica.com/stories/201006090588.html>
Date accessed 5 July 2010
- 6 June The World Health Organization (WHO) reported that tuberculosis is the leading cause of death in South Africa. Because of poor adherence to treatment plans a more dangerous form of the disease, multi-drug resistant tuberculosis is gaining ground in the country. People living with HIV are at greater risk of developing tuberculosis. WHO reports TB has tripled in the past 15 years in countries, such as South Africa, with high HIV prevalence.
Voice of America, Tuberculosis linked to HIV is biggest killer in South Africa, 6 June 2010.
<http://www1.voanews.com/english/news/Tuberculosis-Linked-to-HIV-Is-Biggest-Killer-in-South-Africa-95722839.html?refresh=1>
Date accessed 5 July 2010
- 3 June The South African government announced that it was setting up a ministerial task force to closely monitor ‘xenophobic hotspots’ following reports there was a high risk of renewed attacks on political and economic refugees from other African states. Reports suggested that such attacks may take place once the world cup is over.
SW Radio Africa, South Africa sets up cabinet committee to deal with xenophobia, 3 June 2010.
<http://allafrica.com/stories/201006070662.html>
Date accessed 5 July 2010

USEFUL SOURCES FOR FURTHER INFORMATION

A list of sources with weblinks is provided below, which may be useful if additional up to date information is required to supplement that provided in this report. The full list of sources used in this report can be found in Annex E – References to source material:

(List alphabetically)

AlertNet (Thomson Reuters) <http://www.alertnet.org/db/cp/srilanka.htm>

AllAfrica <http://allafrica.com/southafrica/>

ECOI <http://www.ecoi.net/>

InfoPig <http://www.infopig.com/keywords/South-Africa.html>

Mail and Gauardian <http://www.mg.co.za/>

RefWorld <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

South Africa Broadcasting Corporation
<http://www.sabcnews.com/portal/site/SABCNews/>

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US Department of State <http://www.state.gov/>

United States Department of State, Trafficking in Persons Report 2010 - South Africa,
14 June 2010

<http://www.state.gov/g/tip/rls/tiprpt/2010/>

Date accessed 20 June 2010

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Background information

1. GEOGRAPHY

- 1.01 Europa World Online, accessed 5 March 2010, noted that “The Republic of South Africa occupies the southern extremity of the African mainland.” [1a] (Location, Climate, Language, Religion, Flag, Capital) Jane’s *Sentinel Country Risk Assessment: South Africa*, updated 22 April 2009, observed:

“Covering an area of more than 1.2 million km², it has the ninth-largest territory in Africa. It is the second largest country on the Southern African subcontinent, after Angola. ... To the north, from west to east, the country borders on Namibia, Botswana, Zimbabwe, Mozambique and Swaziland. Lesotho, to the south-east, is totally enclosed by South African territory. The longest border is with Botswana, stretching 1,840 km.” [2a] (Geography)

- 1.02 The population was estimated in 2009 to be more than 49 million. (Europa World Online, retrieved 5 March 2010) [1b] (Area and Population) While the same source, accessed on 5 March 2010, noted:

“The official languages are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu. About 79.0% of the population are black, 9.6% are white, 8.9% are Coloured (of mixed race), and 2.5% are Asian (mainly of Indian origin). ... The administrative capital is Pretoria, the legislative capital is Cape Town, and the judicial capital is Bloemfontein.” [1a] (Location, Climate, Language, Religion, Flag, Capital)

- 1.03 South Africa Info noted on its *South Africa’s Geography* page, accessed 1 June 2010, that:

“South Africa has three capitals: Cape Town, Bloemfontein and Pretoria. The Western Cape city of Cape Town, where the country’s Parliament is found, is the legislative capital. In the Free State, Bloemfontein is the judicial capital, and home to the Supreme Court of Appeal. In Gauteng province, Pretoria, where the Union Buildings and a large proportion of the civil service are found, is the administrative capital, and the ultimate capital of the country.

The largest and most important city is Johannesburg, the economic heartland of the country. Other important centres include Durban and Pietermaritzburg in KwaZulu-Natal, and Port Elizabeth in the Eastern Cape.” [5e]

- 1.04 The US State Department Report on *International Religious Freedom 2009*, published on 26 October 2009, noted that about “... 80 percent of the population is Christian. Hindus, Muslims, Jews, Buddhists, and adherents of traditional African beliefs constitute 5 percent of the population. Approximately 15 percent of the population indicated it adheres to no particular religion or declined to indicate an affiliation.” [4c]

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MAP

- 1.05 Map of South Africa dated 2005 (see below), produced by the UNHCR, was available via the Perry-Castañeda Library Map Collection of the University of Texas Libraries:



[3a]

Maps of the country and by city
<http://www.places.co.za/html/visualfind.html>

Multimap – detailed searchable map
<http://www.multimap.com/>

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2. ECONOMY

- 2.01 Jane's *Sentinel Country Risk Assessment: South Africa*, updated on 15 October 2009, noted in the section on the Economy, that:

"By African standards, South Africa has a high level of development, but in global terms it has a middle-ranking, semi-industrialised economy. In addition, it also has one of the most skewed patterns of income distribution in the world. Some 51 per cent of annual income goes to the richest 10 per cent of households, while less than four per cent of annual income goes to the poorest 40 per cent of households. The gap between rich and poor is narrowing, but at a snail's pace. The government's broad-based Black Economic Empowerment (BEE) programme is aimed at accelerating the pace of economic reform, meant to bridge the gap between the first economy (wealthy and developed) and the second economy (poor and underdeveloped)." [2b] (Economy)

- 2.02 Jane's continued, noting that: "Consecutive quarters of negative growth confirmed that South Africa was in its first recession in 17 years in 2009. ... The South African government intervened to ameliorate the effects of the recession through, for example, the establishment of a ZAR2.4 billion (USD0.3 billion) National Jobs Fund (NJF) to provide temporary relief to those workers facing retrenchment." [2b] (Economy)
- 2.03 The Economist Intelligence Unit (EIU), noted in the South Africa Country Report: April 2010, that, the country rebounded from recession "... in the fourth quarter of 2009, although recovery is proving uneven and is still relatively sluggish... (p16) Real GDP growth, after declining by 1.8% in 2009, is expected to rebound to 2.8% in 2010 ... Inflation is expected to subside to 5.8% ..." during 2010. [31b] (p3)
- 2.04 A report by Statistics South Africa, 7 February 2010, noted that South Africa's unemployment rate stood at 24.3 per cent in the final quarter of 2009. [57a] This represented a 0.7 per cent increase over the 23.6 per cent recorded in the middle of 2009. (Jane's *Sentinel Country Risk Assessment (South Africa)*, 15 October 2009) [2b] (Economy)
- 2.05 Currency exchange website, XE.Com, accessed 1 June 2010,, reported that £1 bought approximately 11 SA Rand. Up to date exchange rates can be found via the following link: <http://www.xe.com/>

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3. HISTORY

The following section provides a brief history of South Africa since 1990. For more detailed histories see the following sources:

South African Government Info (<http://www.info.gov.za/aboutsa/history.htm>),

SouthAfricaInfo (<http://www.southafrica.info/about/history/history.htm>),

BBC Timeline (<http://news.bbc.co.uk/1/hi/world/africa/1069402.stm>).

- 3.01 The US State Department *Background Note: South Africa* (USSD *Background Note*), dated February 2010, noted:

"In February 1990, State President F.W. de Klerk, who had come to power in September 1989, announced the unbanning of the ANC, the PAC, and all other anti-apartheid groups. Two weeks later, Nelson Mandela was released from prison. ... A long series of negotiations ensued, resulting in a new constitution promulgated into law in December 1993. The country's first non-racial elections were held on April 26-28, 1994, resulting in the installation of Nelson Mandela as President on May 10, 1994.

"Following the 1994 elections, South Africa was governed under an interim constitution establishing a Government of National Unity (GNU). This constitution required the Constitutional Assembly (CA) to draft and approve a permanent constitution by May 9, 1996. After review by the Constitutional Court and intensive negotiations within the CA, the Constitutional Court certified a revised draft on December 2, 1996. President Mandela signed the new constitution into law on December 10, and it entered into force on February 3, 1997." [4a] (p4)

- 3.02 The USSD *Background Note* continued:

"During Nelson Mandela's 5-year term as President of South Africa, the government committed itself to reforming the country. The ANC-led government focused on social issues that were neglected during the apartheid era such as unemployment, housing shortages, and crime. ... In order to heal the wounds created by apartheid, the government created the Truth and Reconciliation Commission (TRC) under the leadership of Archbishop Desmond Tutu. During the first term of the ANC's post-apartheid rule, President Mandela concentrated on national reconciliation, seeking to forge a single South African identity and sense of purpose among a diverse and splintered populace, after years of conflict. The diminution of political violence after 1994 and its virtual disappearance by 1996 were testament to the abilities of Mandela to achieve this difficult goal." [4a] (p4)

- 3.03 The USSD *Background Note* finished with:

"Nelson Mandela stepped down as President of the ANC at the party's national congress in December 1997, when Thabo Mbeki assumed the mantle of leadership. Mbeki won the presidency of South Africa after national elections in 1999, when the ANC won just shy of a two-thirds majority in Parliament. President Mbeki shifted the focus of government from reconciliation to transformation, particularly on the economic front. With political transformation and the foundation of a strong democratic system in place after two free and fair national elections, the ANC recognized the need

to focus on bringing economic power to the black majority in South Africa. In April 2004, the ANC won nearly 70% of the national vote, and Mbeki was re-elected for his second 5-year term. ... Despite the fact that he was prevented by term limits from running for a third term as State President, Mbeki ran for a third term as ANC chair in party elections in December 2007. He was defeated by former Deputy President Jacob Zuma, an ANC stalwart with a populist following, a result that signalled widespread dissatisfaction with Mbeki's remote personality and governing style ... On September 20, 2008, Mbeki was 'recalled' by the ANC and replaced by Kgalema Motlanthe as President on September 25. Motlanthe served out the remainder of Mbeki's term and South Africa held its fourth democratic election on April 22, 2009. The ANC won with 65% of the vote followed by the Democratic Alliance (DA) with 16% of the vote." [4a] (p4-5)

- 3.04 During the latter half of 2009 and into 2010 there were a number of reports of riots across South Africa as residents of the country's poorest townships expressed frustration at the perceived slow delivery of basic amenities such as power and water. *The Irish Times* reported on 14 October 2009 that resentment in the townships at the slow pace of change had been building since Jacob Zuma's election as president in April 2009. [81a] *The Times* (UK) reported on 27 February 2010 that: "Sixteen years after the end of white rule, South Africa's townships are burning ... public anger over poor housing, health and education is directed at ... Jacob Zuma, a populist [President] who swept to power last April promising jobs and a better deal for the poorest, but who is finding it difficult to meet raised expectations." [55b]

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4. RECENT DEVELOPMENTS (APRIL - JUNE 2010)

A selection of significant current affairs events from April to June 2010.

Julius Malema

- 4.01 News24 reported on 11 March 2010 that Julius Malema, leader of the ANC Youth League, was under investigation by the South African Human Rights Commission for singing the independence struggle song "... 'Dubula amabhunu baya raypha' (Zulu for, 'shoot the boers, they are rapists') with a group of students ... at the University of Johannesburg ..." A spokesman for the ANC "... defended the youth leader ... saying the lyrics of the song had been quoted out of context." However, the article noted that Mr Malema now faced possible criminal charges as a result of singing the song. [54a]
- 4.02 On the 28 March 2010 *The Times* reported that since the end of apartheid in 1994, over 3,000 white farmers have been killed in South Africa. Mr Malema's singing of the song 'shoot the Boer' is seen by many white farmers as incitement to murder. "... Tom Stokes, of the opposition Democratic Alliance ... said the ANC's continued association with the call to kill Boers could not be justified." [55a]
- 4.03 The Economist Intelligence Unit (EIU), noted in its *South Africa Country Report: April 2010*, that "... Julius Malema, was ordered by the High Court to stop singing ... 'kill the boer'. The ANC intends to appeal against the decision, claiming that the song is part of its 'cultural heritage' (alongside the favourite of the president, Jacob Zuma: 'bring me my machinegun') but Mr Malema's frequent, incendiary rhetoric has sparked deep concern among many whites." [31b] (p12)
- 4.04 However, *The Guardian* reported on the 8 April 2010 that following pressure from ANC leadership, Julius Malema announced that he would stop singing 'shoot the Boer'. [53a] BBC News reported on 12 May 2010 that Mr Malema, was forced to make a public apology and has been told to undergo anger management by the ruling ANC. Officials found Mr Malema has brought the party into disrepute by criticising President Jacob Zuma, the ANC's leader. [52h]

The murder of Eugene Terreblanche

- 4.05 BBC News reported on 4 April 2010 that Eugene Terreblanche, the leader of the right-wing Afrikaner Weerstandsbeweging (Afrikaner Resistance Movement - AWB), was killed on his farm outside the town of Ventersdorp in South Africa's North West Province. "Mr Terreblanche, 69, was beaten to death by two farm workers after a dispute over unpaid wages, police say. Two people have been charged. President Jacob Zuma ... appealed for calm, saying the killing should not incite racial hatred. Mr Terreblanche, who campaigned for a separate white homeland, came to prominence in the early 1980s." [52c]
- 4.06 The Economist Intelligence Unit (EIU) noted that the murder of Mr Terreblanche was a "... potential blow to prospects for racial harmony ..." coming so soon after the "... controversial leader of the ANC Youth League, Julius Malema, was ordered by the High Court to stop singing a song with

inflammatory lyrics (including 'kill the boer'). ... Mr Malema's frequent, incendiary rhetoric has sparked deep concern among many whites." However, it is not thought that there was any direct link between the murder and Mr Malema. There was also no evidence that the murder was politically motivated, but the ANC "... acted quickly to soothe tensions, sending senior officials to visit Mr Terreblanche's farm and family, and offering condolences." The EIU went on to note that the killing highlighted "... the persistent problem of serious, violent crime, which affects both rural and urban dwellers, and all racial groups." (South Africa Country Report: April 2010) [31b] (p12)

- 4.07 BBC News reported on 9 April 2010 that: "Terrablanche's killing has unearthed racial tensions in the small town [Ventersdorp] – tensions which are a rarely spoken fact of life in many South African rural farming communities. Some 3,000 farmers have been killed since apartheid ended in 1994." [52b]

Fifa World Cup

- 4.08 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that: "According to law enforcement officials, new brothels proliferated near football stadiums in advance of the 2010 FIFA World Cup. ... Calls by some government officials to legalize prostitution in advance of the International Federation of Association Football (FIFA) World Cup in 2010 did not gather momentum." In an attempt to disrupt trafficking ahead of the world cup the South African government "... developed action plans and mobilized antitrafficking teams to protect children ... in advance of the 2010 FIFA World Cup ... The government issued guidelines on how to identify at-risk children and police were trained to identify suspicious activity." [4b] (Section 6)
- 4.09 An article published in the *Sydney Morning Herald*, dated 7 May 2010, reported South African police minister, Nathi Mthethwa, announcing that the police had broken up a plot by white supremacists to plant explosives in black townships with the aim of disrupting the soccer world cup. The report noted that: "Tensions rose ... when separatist leader Eugene Terre'Blanche was killed on his farm ... Members of his Afrikaner Resistance Movement initially made threats of revenge that they later retracted." [90a]

Abahlali Basemjondolo (Shack dwellers movement)

- 4.10 IRIN News reported on 21 April 2010 that the rise of an organised poor people's movement known as 'Abahlali Basemjondolo (Shack dwellers movement)' in South Africa's most populous province, KwaZulu-Natal, is being met with increasing hostility by the ruling ANC government, which claims to be the legitimate representative of the poor. Abahlali Basemjondolo, which has 20,000 members in Durban alone, has criticised the ANC for forgetting its roots in the poor dispossessed black communities in South Africa. [42c]

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5. CONSTITUTION

- 5.01 Human Rights Watch (HRW) *World Report 2010: South Africa*, dated 20 January 2010, noted that South Africa has one of the world's most progressive constitutions. [6a] **(International Role)** The South Africa Info website, accessed 10 March 2010, noted that, in addition, the country's Bill of Rights was "second to none", stating that the concept of fundamental and inalienable human rights for all is at the heart of the country's constitution with the document's preamble stating that the new republic is founded on "... democratic values, social justice and fundamental human rights." [5a]
- 5.02 Europa World Online, retrieved 10 March 2010, noted that: "The Constitution was adopted by the Constitutional Assembly (comprising the National Assembly and the Senate) on 8 May 1996, and entered into force on 4 February 1997. [1c] **(The Constitution)** The same source noted that:

"The Republic of South Africa is one sovereign democratic state founded on the following values: human dignity, the achievement of equality and advancement of human rights and freedoms; non-racialism and non-sexism; supremacy of the Constitution and the rule of law; universal adult suffrage, a national common voters' roll, regular elections, and a multi-party system of democratic government, to ensure accountability, responsiveness and openness. There is common South African citizenship, all citizens being equally entitled to the rights, privileges and benefits, and equally subject to the duties and responsibilities of citizenship." [1d] **(Founding provisions)**

The constitution of South Africa is available here
<http://www.info.gov.za/documents/constitution/index.htm>

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6. POLITICAL SYSTEM

- 6.01 The US State Department *Background Note: South Africa* (USSD *Background Note*), dated February 2010, noted:

“South Africa is a multiparty parliamentary democracy in which constitutional power is shared between the president and the Parliament.

“The Parliament consists of two houses, the National Assembly and the National Council of Provinces, which are responsible for drafting the laws of the republic. The National Assembly also has specific control over bills relating to monetary matters. The current 400-member National Assembly was retained under the 1997 constitution, although the constitution allows for a range of between 350 and 400 members. The Assembly is elected by a system of ‘list proportional representation’. Each of the parties appearing on the ballot submits a rank-ordered list of candidates. The voters then cast their ballots for a party. Seats in the Assembly are allocated based on the percentage of votes each party receives. ...

“The National Council of Provinces (NCOP) consists of 90 members, 10 from each of the nine provinces. The NCOP replaced the former Senate as the second chamber of Parliament and was created to give a greater voice to provincial interests. It must approve legislation that involves shared national and provincial competencies as defined by an annex to the constitution. Each provincial delegation consists of six permanent and four rotating delegates.

“The president is the head of state, and is elected by the National Assembly from among its members. ... The president's constitutional responsibilities include assigning cabinet portfolios, signing bills into law, and serving as commander in chief of the military. The president works closely with the deputy president and the cabinet.” [4a] (p5)

See [Political affiliation](#)

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7. Human Rights

INTRODUCTION

- 7.01 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

“The government generally respected the human rights of its citizens. However, the government, nongovernmental organizations (NGOs), and local media reported the following serious human rights problems: police use of excessive force against suspects and detainees, which resulted in deaths and injuries; vigilante and mob violence; abuse of prisoners, including beatings and rape and severe overcrowding of prisons; lengthy delays in trials and prolonged pre-trial detention; forcible dispersal of demonstrations; pervasive violence against women and children and societal discrimination against women, persons with disabilities and the lesbian, gay, bisexual, and transgender (LGBT) community; trafficking in persons; violence resulting from racial and ethnic tensions and conflicts with foreigners; and child labor, including forced child labor and child prostitution.” [4b] (Introduction)

- 7.02 Human Rights Watch (HRW) noted in its *World Report 2010: South Africa*, published on 20 January 2010, that: “... widespread poverty, unemployment, high levels of violent crime, and gender inequality ... continue to undermine the country’s human rights environment, especially for the most vulnerable in society.” HRW noted that a number of vulnerable groups, including women and girls, were at particularly risk, with the poor lacking access to adequate healthcare services, especially those with HIV/AIDS. A significant proportion of women and girls remained at risk of “shocking” levels of violence, including rape. In addition, there were increasing reports of black lesbian women being subject to “corrective rape”. “The South African Human Rights Commission and other NGOs have recommended that the criminal justice system needs to take concerted action to deal with hate crimes in the country, something that the government has yet to do.” [6a]

- 7.03 The Congressional Research Service noted in a report entitled *South Africa: Current Issues and U.S. Relations*, dated 20 May 2009, that significant levels of crime had created “... a high level of fear ...” in the country. The “... South African Safety and Security Minister called the high number of cases of violent crime ‘disconcerting and unacceptable.’ ... Some analysts attribute the high rate of crime to the country’s high level of wealth disparity, but also to shortcomings within the police force and in the lack of a comprehensive government approach. South African officials have acknowledged the problem.” [32a] (p13)

- 7.04 Amnesty International’s *Annual Report 2010*, published on 28 May 2010, noted that:

“Increased incidents of torture and extrajudicial executions by police were reported. Refugees and migrants continued to suffer discrimination and displacement in large-scale incidents of violence. Advocates of housing rights were threatened and attacked with impunity. High levels of violence against women and girls were reported, along with failures by the authorities to provide adequate support to survivors of such abuse. An estimated 5.7 million

people were living with HIV, with women continuing to be disproportionately affected.” [12b] (Introduction)

- 7.05 Freedom House noted in *Freedom in the World 2010*, published 1 June 2010, that while “Freedoms of expression and the press are protected in the constitution and generally respected in practice. ... The government is increasingly sensitive to media criticism and has encroached on the editorial independence of the SABC. Government critics have been barred or restricted from SABC airwaves.” [11c] (p3)

DEATH PENALTY

- 7.06 Hands Off Cain, updated 31 July 2009, reported that South Africa has abolished the death penalty for all crimes. [23a]

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8. SECURITY FORCES

8.01 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that: "The SAPS [South African Police Service], under the Department of Police, has primary responsibility for internal security. The South African National Defense Force (SANDF), under the Department of Defense, is responsible for external security but also has domestic security responsibilities such as patrolling the borders." [4b] (1d) The USSD 2009 noted that: "Civilian authorities generally maintained effective control of the security forces." [4b] (Introduction)

8.02 Jane's *Sentinel Security Assessment: South Africa*, updated 22 April 2009, noted that:

"A non-statutory cabinet committee, the National Security Council (NSC), was established in June 2000. It functions as the primary cabinet committee, and together with the other relevant cabinet committees and the National Intelligence Co-ordinating Committee (NICOC), the National Intelligence Agency (NIA), the South African Secret Service (SASS), military intelligence and crime intelligence, forms the main security and intelligence framework... The NSC is convened by the president to ensure a rapid, co-ordinated and effective response to issues and events having a particularly urgent and severe impact on the security of South Africa and its people. The deputy president is a permanent member." [2f] (Security and Foreign Forces)

POLICE

8.03 Jane's *Sentinel Security Assessment: South Africa*, updated 22 April 2009, noted that:

"In 2007, police manpower stood at 155,320 (including civilians). The target for the next three years is a force of about 190,000 and a recruitment drive for 30,000 more reservists. Currently the police to population ratio is about 1:385, a comparable figure to developed Western states and fairly high by African standards. Some members of the South African National Defence Force (SANDF) have been transferred to the police, mainly in the Protection and Security Services Division ... The South African Police Service (SAPS) reports under the Ministry for Safety and Security, with a national commissioner, an independent complaints directorate and a secretariat for safety and security on the next level... Insufficient manpower in the SAPS and equipment shortages remain serious obstacles to the more effective combating of crime. Added to this are certain problems regarding corruption as well as other crimes committed by some police officers. Murder of police officers also continues to be a problem, with 1,274 attacks on SAPS members during 2005-06 and 95 murders of SAPS members." [2f] (Security and Foreign Forces)

Detailed information about the South African Police Service (SAPS), including police station profiles for each province, can be found via the following link: <http://www.saps.gov.za/>

A further useful source detailing the activities of SAPS can be found at the Overseas Security Advisory Council *South Africa 2010 Crime & Safety Report*,

published on 9 June 2010:

<https://www.osac.gov/Reports/report.cfm?contentID=118165>

The Institute for Security Studies publishes reports on crime statistics for South Africa: <http://www.iss.co.za/pgcontent.php?UID=13094>

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Arbitrary arrest and detention

- 8.04 The USSD 2009 reported that: “The constitution and law prohibit arbitrary arrest and detention, and the government generally observed these prohibitions; however, prolonged pre-trial detention was a problem, and police arbitrarily arrested demonstrators.” [4b] (Section 1d)

Torture

- 8.05 The USSD 2009 noted that:

“The constitution and law prohibit such practices; however, some police officers reportedly tortured, beat, raped, and otherwise abused suspects. According to Amnesty International in a September memoranda to the government, methods included the use of electric shock, suffocation, and prolonged assaults with batons, fists, and booted feet. Police torture and physical abuse allegedly occurred during interrogation, arrest, detention, and searches of persons' homes, and sometimes resulted in death.

“During the year the ICD [Independent Complaints Commission] reported 25 complaints of rape; however, unlike in previous years, they did not report complaints of torture. The report stated that three cases of torture from previous years were investigated but did not indicate the disposition of the complaints. The ICD received 928 reports of assault with the intent to cause grievous bodily harm. Officers convicted of this charge were given sentences ranging from verbal and written warnings to fines and dismissal from service. The report did not stipulate how many officers were convicted.” [4b] (Section 1c)

- 8.06 Amnesty International's *Annual Report 2010*, published on 28 May 2010, noted that during 2009 “Incidents of torture and other ill-treatment by police of detained crime suspects were reported.” These reports increased over the previous year and “Corroborated cases included the use of suffocation and electric shock torture. ... From April 2008 to March 2009 ... [the Independent Complaints Directorate (ICD)] investigated 828 incidents of assault with intent to cause grievous bodily harm, some of which amounted to torture.” [12b] (p1-2) Reports of torture at the hands of police were also corroborated by Freedom House's *Freedom in the World 2010* report, published 1 June 2010. [11c] (p4)

Extra-judicial killings

- 8.07 The USSD 2009 stated: “There were no reports of politically motivated killings by the government or its agents; however, police use of lethal force during apprehensions resulted in a significant number of deaths, and deaths in police custody were a problem.” [4b] (Section 1a) Amnesty International noted that the “... ICD [Independent Complaints Directorate] reported a 15 per cent increase

in deaths in custody and ‘as a result of police action’ over the past two reporting years. KwaZulu-Natal province showed the highest increase, 47 per cent, from 175 to 258 deaths.” [12b] (p2)

Avenues of complaint

- 8.08 In April 1997 the Government set up the Independent Complaints Directorate (ICD). The ICD website notes that it is responsible for investigating “... complaints of brutality, criminality and misconduct against members of the South African Police Service (SAPS), and the Municipal Police Service (MPS).” The ICD “... operates independently from the SAPS ...” [8a]
- 8.09 The USSD 2009 noted that the ICD investigated numerous complaints against the police service, including allegations of torture, rape and unlawful killing. The report noted that investigations resulted in police officers being “... convicted of ... sentences ranging from verbal and written warnings to fines and dismissal from service. The report did not stipulate how many officers were convicted.” [4b] (Section 1c)

See also [Judiciary](#)

Witness protection

- 8.10 A report published by Reliefweb on 6 May 2010 entitled *The Justice Sector Afterthought: Witness Protection in Africa*, noted that: “The national witness protection programme was established in 1996 by the Department of Justice under the national crime prevention strategy. The Witness Protection Act 1998, which came into effect on 31 March 2000, provided the legal framework, and the programme received operational and administrative support from the South African Police Service (SAPS) in the nine South African provinces.” [82a] (p96)
- 8.11 The Western Cape regional government website, Cape>gateway updated on 4 January 2006, stated that witness protection was available to individuals who were giving evidence (testifying in court or giving an affidavit) in a serious criminal case, an inquest, a commission, a tribunal, an investigation by the Independent Complaints Directorate or an asset forfeiture case, or to those who have testified in the past. Members of the witness’s family and close associates are also entitled to apply for protection. (Cape>gateway, updated 4 January 2006) [20a]
- 8.12 Witnesses applying for protection will be provided with an initial level of temporary protection of up to two weeks and the type of protection provided will depend upon the seriousness of the case. During this period a witness protection officer will investigate the application making a full risk assessment which will include a professional psychological evaluation. Following the assessment, the Director of the Witness Protection Unit will decide whether to refuse the application, extend the period of temporary protection or increase the level of protection to ‘permanent level’. ‘Permanent protection’ means that protection will be provided so long as there remains a real threat of violence and intimidation. (Cape>gateway, 4 January 2006) [20a]
- 8.13 An information sheet produced by Cape>gateway (Cape Province Government), accessed 22 March 2010, noted that witnesses can be provided

with support and assistance. Among the main areas of support and assistance was:

- “• Witnesses and extended family, where necessary, will be placed in a safe house which is furnished and self-catering (you do not have to pay for this accommodation).
- Relocation - away from the area where you usually live if that is considered necessary.
- A clinical psychologist will do a trauma and psychological assessment and help you with any trauma you might be experiencing.
- You will undergo an induction programme so that you will know what to expect.
- If you are unemployed, you will get an allowance for your basic needs.
- If you are employed, you will get a replacement salary.
- If your children are with you, arrangements will be made so that they can go to school.
- Some other costs will also be covered, such as your schooling, transport, clothing and medical costs.” [20a]

8.14 The Capegateway website continued:

“The Witness Protection Unit now also provides 'after-care' to help you to adjust after you leave permanent protection (that is, when you are discharged). During the phasing-out period, another risk assessment will be done. Discharge from permanent protection will probably involve changing your identity. You will be helped to re-integrate into society. You may also have to relocate permanently away from where you used to live.” [20a]

8.15 A report by the Parliamentary Monitoring Group, in a document entitled *Country Corruption Assessment Report*, dated 2003, noted that: “In most cases, witnesses are discharged from the programme six weeks after providing evidence in court.” [17b] (p9)

8.16 On applying for protection the Witness Protection Unit can arrange for removal as soon as possible if there is a threat of immediate danger. (Capegateway, 4 January 2006) [20a] The National Prosecution Authority (NPA) *Annual Report 2008/9* noted that it is able to provide protection 24 hours, 7 days a week. (National Prosecuting Authority, dated March 2007) [21a]

The Witness Protection Unit's recent record

8.17 The NPA *Annual Report 2008/9* noted that during the year it provided protection to 218 witnesses and an additional 213 family members. “No witnesses or related person on the programme were threatened, harmed or assassinated in the past seven (7) years ...” [21b] (p31) The Reliefweb report *The Justice Sector Afterthought: Witness Protection in Africa*, published 6 May 2010, noted that:

“The contemporary protection programme performed successfully when evaluated on its ability to protect organised crime witnesses. The one death that occurred demonstrates the high level of threat posed to gang violence witnesses. The murder occurred after a witness contacted family members through channels prohibited under his agreement. The witness asked his family to visit him and organised criminal elements who were watching the family followed them to the witness, who they then murdered.” [82a] (p103)

- 8.18 During 2008/9 the NPA recorded a 98 per cent conviction rate. [21b] (p35)
Complaints about the programme was reported to have risen to 2.4 per cent.
[21b] (p31)

Further detailed information about the witness protection system in South Africa can be found in the Reliefweb report:

[http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/SNA-A-85Z3FQ-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/SNA-A-85Z3FQ-full_report.pdf/$File/full_report.pdf)

ARMED FORCES

- 8.19 Jane's *Sentinel Country Risk Assessment: South Africa*, updated 18 December 2009, recorded that the country's armed forces numbered around 64,000 personnel comprising of 39,000 in the army, 11,000 in the air force and 7,000 in the navy. [2c] (Armed Forces) Joining the army is voluntary: there is no longer conscription into the armed forces. (Jane's, 19 July 2009) [2c] (Army)

- 8.20 Jane's also noted, in an entry dated 13 July 2009, that:

"The South African Army (SAA) is still the best trained and equipped army in Sub-Saharan Africa. It has a sound base of operational experience underlying its doctrine and training systems and still has many highly experienced personnel, despite losses suffered during the process of integrating the armed wings of the African National Congress and Pan-African Congress of Anzania (PAC) and then down-sizing to meet budget limits." [2d] (Army)

Military service

- 8.21 Jane's *Sentinel Country Risk Assessment: South Africa*, updated 19 July 2009, recorded that the country no longer has conscription to the armed forces. [2c] (Army)
- 8.22 War Resisters International confirmed in a report published in 1998 that military service was voluntary. In addition, the report noted that there are three categories of military "... service – full career, up to 10 years, or up to 6 years. The minimum legal recruitment age is 17." Conscientious objection does not apply to those who joined the military services on a voluntary basis. [9a]

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9. CRIME

- 9.01 Jane's *Sentinel Country Risk Assessment: South Africa*, updated 21 May 2009, noted that "... very high levels of crime (much of it violent), unemployment and the burgeoning activity of sophisticated criminal syndicates, not least in the illicit narcotics trade ..." were central to South Africa continued crime wave. The report continued:

"Public disillusionment with the government's response has manifested itself, inter alia, in the emergence of vigilante groups and increased emigration of professionals and those who can financially afford it. ... Furthermore, dissatisfaction with alleged incidents of nepotism, incompetence and corruption, especially at local government level, has led to a number of violent protests." [2h] (Executive summary)

- 9.02 The BBC reported on 17 May 2010 that:

"Each day an average of nearly 50 people are murdered [in South Africa]. In addition to these 18,000 murders each year, there are another 18,000 attempted murders. Murder is a staple of the news. In April, it was white supremacist Eugene Terreblanche. Earlier this month, it was Lolly Jackson, the flamboyant owner of the Teazers strip club chain, killed at a house in Kempton Park, just outside Johannesburg." [52d]

- 9.03 However, the BBC article went on to report the views of Johan Burger "... a senior researcher in the crime and justice programme at South Africa's Institute for Security Studies ..." who noted the complicated picture regarding the spread of crime across the country. Mr Burger noted that "The first thing is that the South African murder rate is going down and not up. 'Contrary to what many people think, the murder rate, while still extremely high, is down by about 44% since 1995. That's a huge decrease.'"

"What is important to understand about our high crime rate is that we know from research that approximately 80% of our murders happen within a very specific social context, mostly between people that know one another. 'There is something wrong within some of our communities in terms of the social interaction and the social conditions.' In blunt terms, areas with problems have murder levels that can be wildly above the national average." [52d]

- 9.04 Freedom House noted in *Freedom in the World 2010*, published 1 June 2010, that because "... South Africa has one of the highest violent-crime rates in the world. The Zuma administration has given the police more latitude to use force against criminals, and in 2009 a number of police officials made statements alluding to a 'shoot to kill' policy. However, after a string of civilian deaths in police actions, Zuma announced that no such policy existed." [11c] (p4)

The Institute for Security Studies publishes a number of reports on crime, including crime statistics for South Africa:
<http://www.iss.co.za/pgcontent.php?UID=13094>

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10. JUDICIARY

- 10.01 Jane's *Sentinel Country Risk Assessment: South Africa*, updated 21 May 2009, noted that:

"The legal system is based on Roman-Dutch law and English Common Law with the constitution providing for an independent and impartial judiciary. The majority of cases are heard in the High Courts and Magistrates' Courts, but the system also includes a Constitutional Court and a Supreme Court of Appeal. The Constitutional Court consists of a president, a deputy president and nine other judges who interpret and decide constitutional issues, while the Supreme Court of Appeal, comprising a chief justice, a deputy chief justice and a predetermined number of judges of appeal, acts as the highest court for non-constitutional matters. All judges are appointed by the president following consultation with relevant bodies including the Judicial Service Commission and, in some instances, with leaders of parties represented in the National Assembly" [2e] (Internal Affairs)

- 10.02 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

"The constitution and law provide for an independent judiciary, and the government generally respected judicial independence in practice. However, the judiciary was understaffed and under funded, and there were reports that legal documents used in trials were lost. According to the presidentially mandated criminal justice system working group, made up of ministers and deputy ministers concerned with the judicial process, more than a million of the two million criminal cases reported annually were never resolved. According to the group, a number of problems contributed to the country's low 10.3 percent conviction rate in criminal cases, including inadequate collection of evidence at crime scenes, insufficient investigation of crimes, long trials, and ineffective court processes. During the year the government operated 58 justice centers that provided legal assistance to the poor to speed the administration of justice, reduce the court rolls, and alleviate overcrowding in prisons. However, serious delays continued to be a problem." [4b] (Section 1e)

- 10.03 The USSD 2009 continued:

"The bill of rights provides for due process, including the right to a fair public trial within a reasonable time after being charged, and the right to appeal to a higher court. ... Detainees and defendants have the right to state funded legal counsel when 'substantial injustice would otherwise result'; however, a general lack of information for accused persons regarding their rights to legal representation and the government's inability to pay for these services remained problems." [4b] (Section 1e)

- 10.04 The USSD 2009 also noted that "Lengthy pretrial detention was a problem. According to the JIP [Judicial Inspectorate of Prisons] annual report, detainees waited an average of three months, but some as long as two years, before a trial. The report found that 49,477 prisoners were awaiting trial as of March 31, an increase from 48,729 prisoners from the previous year." [4b] (Section 1e)

ORGANISATION

- 10.05 The following is a list of the different judicial bodies that operate in South Africa, taken from Europa Publications and the South African Government website:

Constitutional Court

“The Constitutional Court, situated in Johannesburg, consists of a Chief Justice, a Deputy Chief Justice and nine other justices. Its task is to ensure that the executive, legislative and judicial organs of government adhere to the provisions of the Constitution. It has the power to reverse legislation that has been adopted by Parliament.” (Europa World Online, retrieved 12 March 2010) [1e] (Judicial System)

Supreme Court of Appeal

“The Supreme Court of Appeal, situated in Bloemfontein, comprises a President, a Deputy President and a number of judges of appeal, and is the highest court in all but constitutional matters.” (Europa World Online, retrieved 12 March 2010) [1e] (Judicial System)

High Courts

“Presently there are 10 court divisions: Cape of Good Hope (with its seat in Cape Town); Eastern Cape (Grahamstown); Northern Cape (Kimberley); Orange Free State (Bloemfontein); Natal (Pietermaritzburg); Transvaal (Pretoria); Transkei (Umtata); Ciskei (Bisho); Venda (Sibasa), and Bophuthatswana (Mmabatho). Each of these divisions, with the exception of Venda, is composed of a Judge President and, if the President so determines, one or more Deputy Judges President, and as many judges as the President may determine from time to time.

“There are also three local divisions: the Witwatersrand Local division (Johannesburg), Durban and Coast Local division (Durban), and South-Eastern Cape division (Port Elizabeth). These courts are presided over by judges in the provincial courts concerned... These divisions hear matters that are of such a serious nature that the lower courts would not be competent to make an appropriate judgment or impose a penalty. Except where minimum or maximum sentences are prescribed by law, their penal jurisdiction is unlimited and includes life imprisonment in certain specified cases.” (South Africa Info, last modified 14 October 2004) [10a] (p2)

Regional Courts

“The Minister of Justice and Constitutional Development may divide the country into magisterial districts and create regional divisions consisting of districts. Regional Courts are then established at one or more places in each regional division to hear matters within their jurisdiction. Unlike the High Court, the penal jurisdiction of the Regional Courts is limited by legislation.” (South Africa Info, last modified 14 October 2004) [10a] (p3)

Magistrates Courts

“Magisterial districts have been grouped into 13 clusters headed by chief magistrates... In terms of the Magistrates Act, 1993 (Act 90 of 1993), all magistrates in South Africa fall outside the ambit of the Public Service. The aim is to strengthen the independence of the judiciary. Although the Regional Courts have a higher penal jurisdiction than Magistrate’s Courts (District

Courts), an accused person cannot appeal to the Regional Court against the decision of a District Court, only to the High Court.

“By March 2003, there were 370 magistrates offices, 51 detached offices, 107 branch courts and 234 periodical courts in South Africa, with 1,772 magistrates.” (South Africa Info, last modified 14 October 2004) [10a] (p3)

Other criminal courts

“In terms of statutory law, jurisdiction may be conferred upon a chief or headman or his deputy to punish an African person who has committed an offence under common law or indigenous law and custom, with the exception of certain serious offences specified in the relevant legislation. The procedure at such trials is in accordance with indigenous law and custom. The jurisdiction conferred upon a chief and a magistrate does not affect the jurisdiction of other courts competent to try criminal cases.” (South Africa Info, last modified 14 October 2004) [10a] (p6)

INDEPENDENCE / FAIR TRIAL

- 10.06 Both the USSD 2009 and Freedom House (2009) noted that the judiciary was generally independent of government interference. [4b] (Section 1e) (Freedom in the World 2009 - South Africa, 16 July 2009) [11a] Freedom House reported a number of cases of political interference, particularly concerning charges of corruption against Jacob Zuma. However, the source reported that the higher courts, such as “... the Constitutional Court and the Supreme Court, operated with substantial autonomy.” (Freedom in the World 2010 - South Africa, 1 June 2010) [11c]

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11. ARREST AND DETENTION – LEGAL RIGHTS

- 11.01 The US State Department Report on *Human Rights Practices 2009* (USSD 2009), published 11 March 2010, reported that:

“The law requires arrest warrants based on sufficient evidence and issued by a magistrate or judge and provides that all detainees be informed promptly of the reasons for their detention, and of their right to remain silent and the consequences of waiving that right. Detainees must be charged within 48 hours of arrest; held in conditions respecting human dignity; allowed to consult with legal counsel of their choice at every stage of their detention or provided state funded legal counsel when ‘substantial injustice would otherwise result,’ and permitted to communicate with relatives, medical practitioners, and religious counsellors. Courts and police generally respected these rights. Detainees must be released (with or without bail) unless the interests of justice require otherwise; however, bail for pretrial detainees often exceeded what suspects could pay. According to the annual JIP report, 8,500 prisoners remained in detention as of March 31 because they were unable to post bail. Some schoolchildren spent more than a year in detention because their families could not post bail.” [4b] (Section 1d)

See also: [Security forces](#); [Judiciary](#) and [Prison conditions](#)

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12. PRISON CONDITIONS

- 12.01 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

“The majority of the 237 operational prisons did not meet international standards, and prison conditions did not always meet the country's minimum legal requirements. The Judicial Inspectorate of Prisons (JIP) received 2,010 complaints of assaults against prisoners by correctional officers for the reporting period from April 2008 through March 2009. There were several reports of physical and sexual abuse by both prison officials and prisoners. Some detainees awaiting trial reportedly contracted HIV/AIDS through rape. According to the JIP report, there were 1,048 prison deaths during the reporting period. Of these, 982 were from natural causes, including HIV/AIDS; the remaining deaths were the result of suicides, assaults, or accidents. Of the total deaths, 751 were sentenced prisoners, while the remaining 297 were pretrial detainees.” [4b] (Section 1c)

- 12.02 The *2009 Annual Report* by the Judicial Inspectorate of Prisons (JIP 2009 Report), covering the period 1 April 2008 to 31 March 2009, noted that the 237 prisons in South Africa had a maximum capacity for close to 115,000 prisoners; however, the report noted that as of 31 March 2009, there were over 165,000 inmates in custody. In some prison, such as the Johannesburg Medium A Correctional Centre, overcrowding had risen to around 240 per cent, although the report noted that the average “... population per centre may be gauged fairly conservatively at some 483 inmates each.” [74a] (p15) The USSD 2009 noted that: “Chief Deputy Commissioner for Security Willem Damons reported to parliament's correctional services committee that prison overcrowding was down to 142 percent of capacity in 2008-09 from the 164 percent recorded the previous year.” [4b] (Section 1c) The JIP 2009 Report provides a table of the 19 most overcrowded prisons in South Africa, all of which have occupancy levels over 200 per cent. Although, a further 49 prisons were reported to have occupancy levels below 100 per cent. [74a] (p17)

A copy of the JIP report can be found here:

<http://judicialinsp.pwv.gov.za/Annualreports/Annual%20Report%202008%20-%202009.pdf>

- 12.03 The USSD 2009 went on to note that of the 114,822 in custody, “... 3,659 were women. There were 1,663 juveniles in prison facilities ... Due to severe overcrowding, many prisoners had less than 13 square feet in which to eat, sleep, and spend 23 hours a day. The unmet norm applied to prisons for floor space per prisoner is approximately 36 square feet for communal space and 60 for single cells.” [4b] (Section 1c) The JIP 2009 Report went on to note that “... 49,477 (30%) [of prisoners] are unsentenced or awaiting-trial detainees and 115,753 are inmates serving a sentence of direct imprisonment.” [74a] (p15)
- 12.04 The USSD 2009 went on to note that:
- “Corruption remained a problem within prisons, although in most cases correctional services officials were either suspended or fired following an investigation. According to the JIP report, there were 500 complaints of corruption during the annual reporting period out of the 260,268 complaints

received. In November 2007 then President Thabo Mbeki ordered the Special Investigating Unit (SIU) to look into allegations of tender abuse in the DCS. In May 2008 SIU briefed the Parliamentary Portfolio Committee on Correctional Services. Investigations, which continued, raised procedural concerns, identified irregularities in 23 contracts, and recommended that 433 officials be penalized. Twenty-six doctors and ten officials were charged with criminal offences; an additional 433 officials were disciplined. In August 2008 the DCS national commissioner launched an investigation into allegations of malfeasance in tendering for contracts in which funds were allegedly awarded unlawfully to a catering company. On September 17, the SIU delivered its final investigation results to Correctional Services Minister Nosiviwe Mapisa-Nqakula. On December 7, the National Prosecuting Authority (NPA) forwarded the findings to the Serious Economic Offenses Unit of SAPS for further investigation.” [4b] (Section 1c)

12.05 The report continued:

“Unlike in previous years, there were no reports of abuse at the Lindela Repatriation Center, the country’s largest detention facility for undocumented immigrants.

“The government operated 13 youth detention facilities. Unlike in previous years, the JIP did not report on any children under the age of 18 being held with adults in order to be close to the courts.

“Pretrial detainees generally were held with convicted prisoners.

“The government permitted independent monitoring of prison conditions, including visits by human rights organizations to most facilities.” [4b] (Section 1c)

12.06 A report published by IRIN on 22 March 2010 noted that about 143 children of female prisoners were living in prisons across South Africa. The report noted that conditions for children were not ideal. The Correctional Services Amendment Act of 2008 specifies that “... children of women prisoners are only allowed to stay with their mothers from birth until two years of age.” However, it noted that some children remained with their mothers beyond this age because of difficulties in finding accommodation with families or foster carers. [42b]

12.07 The USSD 2009 noted that: “A 2008 Department of Correctional Services (DCS) study on HIV/AIDS indicated 19.8 percent of sentenced prisoners between the ages of 15 and 49 were HIV-positive. However, NGOs working on HIV/AIDS in prisons believed that the percentage of HIV-positive prisoners was higher ... According to the DCS’s annual report, 18 centers dispensing antiretroviral (ARV) therapy were operational during the year.” [4b] (Section 1c)

The JIP 2009 Report provides detailed information on a wide range of issues, including prison death rates, medical parole, segregation etc:

<http://judicialinsp.pwv.gov.za/Annualreports/Annual%20Report%202008%20-%202009.pdf>

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13. POLITICAL AFFILIATION

The following should also be read in conjunction with sections on Freedom of speech and media, and Human rights institutions, organisations and activists.

FREEDOM OF EXPRESSION

13.01 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that: “The constitution and law provide citizens with the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections based on universal suffrage.” [4b] (Section 3)

13.02 The Freedom House (FH) report, *Countries at the Crossroads 2010, Country Report South Africa*, released in April 2010, observed that:

“In April 2009, South Africans voted in the country's fourth round of national and provincial elections since the advent of democracy. As with the previous polls, the balloting was declared free and fair by domestic and international observers. Despite the dramatic split in the ruling party and the formation of COPE, the ANC won yet another sweeping victory, taking 65.9 percent of the national vote and claiming clear majorities in eight provinces. The Democratic Alliance (DA) beat out COPE to retain its status as the country's largest opposition party, winning 16.7 percent of the national vote and outright control of the Western Cape province. Zuma was easily elected state president by the National Assembly (NA) the following month.” [11d] (p1)

FREEDOM OF ASSOCIATION AND ASSEMBLY

13.03 The USSD 2009 reported that: “The law provides for freedom of association, and the government generally respected this right. ... The constitution and law provide for freedom of assembly; however, police forcibly dispersed several demonstrations during the year, which resulted in injuries.” [4b] (Section 2b)

13.04 The FH report, *Freedom in the World 2010, South Africa*, released on 1 June 2010, commenting on events in 2009, stated:

“Freedoms of association and peaceful assembly are also secured by the constitution, and South Africa hosts a vibrant civil society and an embedded protest culture. Nongovernmental organizations (NGOs) can register and operate freely. Lawmakers regularly accept input from NGOs on pending legislation. A recent trend of protests over the pace and extent of public-service delivery—including housing, electricity, and water—escalated significantly in both scope and violence in 2009, particularly during the winter months. Police used rubber bullets and water cannons to disperse protests throughout the year.

“South Africans are free to form, join, and participate in independent trade unions. COSATU, which claims over two million members, is part of a tripartite governing alliance with the ANC and the SACP. Strike activity is common. In July 2009, 70,000 construction workers building soccer stadiums for the upcoming World Cup went on strike; that same month, municipal workers also struck across the country. In August, a demonstration by over 1,500 soldiers demanding higher pay turned violent as the soldiers rioted in Pretoria.

Subsequently, the government considered banning the unionization of the defense forces." [11c] (p3)

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14. FREEDOM OF SPEECH AND MEDIA

- 14.01 Freedom House's *Freedom in the World 2010*, South Africa, released on 1 June 2010, commenting on events in 2009, stated:

"Freedoms of expression and the press are protected in the constitution and generally respected in practice. A number of private newspapers and magazines are sharply critical of powerful figures and institutions. Most South Africans receive the news via radio outlets, a majority of which are controlled by the SABC. The SABC also dominates the television market, but two commercial stations are expanding their reach. Internet access is unrestricted and growing rapidly, although many South Africans cannot afford the service fee." [11c]

- 14.02 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

"Individuals, organizations, journalists and sectors of civil society were generally able to articulate criticism of the government openly, without fear of reprisals, although some journalists expressed concern that the government heavily influenced and tried to control the media. The practice of appointing journalists to key positions in the media due to their political allegiances remained a problem, particularly within the public broadcaster the South African Broadcasting Corporation (SABC)." [4b] (Section 2a)

- 14.03 The Freedom House report, *Countries at the Crossroads 2010: Country Report South Africa*, released in April 2010, observed that while there was generally a high level of freedom of expression, the "ANC and state officials in turn have become increasingly sensitive to media criticism and reporting on corruption, and have initiated a number of gag orders and lawsuits to prevent damaging reporting. The government has also threatened to withdraw advertising from critical newspapers." [11d] (p3)

- 14.04 The BBC's *South Africa profile*, updated in June 2010, stated:

"South Africa is the continent's major media player, and its many broadcasters and publications reflect the diversity of the population.

"Established state-run and commercial TV networks broadcast nationally, and hundreds of thousands of viewers subscribe to satellite and cable pay-TV services.

"Deregulation in 1996 led to a proliferation of radio stations. Listeners in Johannesburg alone can choose from among some 40 radio services, from the national broadcasts of the state-owned South African Broadcasting Corporation (SABC) to community stations targeting local neighbourhoods or ethnic groups.

"The constitution provides for freedom of the press, and this is generally respected. Laws, regulation and political control of media content are considered to be moderate and there is little evidence of repressive measures against journalists.

“Newspapers and magazines publish reports and comment critical of the government, and the state-owned SABC is far more independent now than during the apartheid era. However, in 2009 the SABC was plagued by a string of scandals and a series of high-level resignations. The broadcaster had become mired in a financial crisis.

“There were 5.3 million internet users by 2009, comprising around 10% of the population (World Wide Worx study, 2010). Analysts say prohibitive access costs have hampered mass take-up.” [52e]

- 14.05 The USSD 2009 noted that: “There were no government restrictions on academic freedom or cultural events.” [4b] (Section 2a)

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15. HUMAN RIGHTS INSTITUTIONS, ORGANISATIONS AND ACTIVISTS

- 15.01 Freedom House noted in its report *Freedom in the World 2010 - South Africa*, dated 1 June 2010, that there were no restrictions on the registration and operation of Non-Governmental Organisations (NGOs) in South Africa. Indeed, NGOs were regularly involved in the legislative process. [11c] In addition, the Freedom House report, *Countries at the Crossroads 2010, Country Report South Africa*, released in April 2010, observed that:

“Thousands of civic groups and nongovernmental organizations operate freely throughout South Africa, including a vibrant and politically active trade union movement led by COSATU. Most of these civil society organizations (CSOs) deal with education, good governance, land reform, and housing or service delivery. CSOs regularly testify before and submit presentations to legislative committees regarding pending legislation. While close relationships with the ANC and the government have discouraged some CSOs from pursuing public advocacy campaigns aimed at affecting legislation, others have been vociferous in this regard. Registration of CSOs is relatively straightforward, and organizations are not required to disclose their funding sources to the government.” [11d] (p3)

- 15.02 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

“A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to their views. Many organizations participated in governmental bodies that gathered information and developed policies related to human rights. Major independent human rights NGOs included Lawyers for Human Rights, the Foundation for Human Rights and the Human Rights Institute of South Africa. International and domestic NGOs and UN agencies spoke out against xenophobic violence in the country during the year and criticized the government's response.” [4b] (Section 5)

The following links provide an exhaustive list (including links to organisations websites) of NGOs and civil society activists in South Africa:

Directory of Development Organisations

http://www.devdir.org/files/South_Africa.PDF

World Association of Non-Governmental Organizations (WANGO)

<http://www.wango.org/resources.aspx?section=ngodir&sub=region®ionID=18&col=BFB07D>

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16. CORRUPTION

16.01 The Freedom House (FH) report, *Countries at the Crossroads 2010, Country Report South Africa*, released in April 2010, observed that: "There are several agencies with a legal mandate to combat graft by public officials, but enforcement of anticorruption laws is a major problem. Petty corruption is a regular part of South Africans' interactions with state authorities, and the awarding of state contracts is heavily politicized." [11d] (p8)

16.02 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

"The law provides criminal penalties for official corruption, and the government generally implemented these laws effectively. Public officials were subject to financial disclosure laws, and the government continued its efforts to curb corruption; however, corruption remained a problem. The public perception of widespread official corruption, particularly in the police and the DHA, continued despite government assurances that the issue was being addressed. Additionally, public perception of corruption at the local government level increased following President Zuma's declaration that his government would fight to curb corruption among provincial and local government officials. Several officials, including leaders in Gauteng and Northwest provinces, were removed by the government following allegations that they took bribes. ...

"The government's anticorruption actions included ongoing investigations into the alleged misconduct of public officials. At least 10 agencies were engaged in anticorruption efforts. Some, like the Public Service Commission, the Office of the Public Prosecutor, and the Office of the Auditor-General, are constitutionally mandated. SAPS had a unit dedicated to anticorruption activities. ...

"The Office of the Public Protector investigated government abuse and mismanagement and served as the office of last resort for citizens reporting unfair treatment by government entities. The office handled an increasing number of complaints but was hampered by severe resource constraints." [4b] (Section 4)

16.03 While President Zuma has committed the government to fighting corruption, FH *Countries at the Crossroads 2010* noted that "In 2006, [the] then auditor-general ... reported that more than 14 cabinet ministers and deputies, along with 50,000 other public servants, had failed to publicly declare their business interests as required by law. There are no penalties for such failures in practice." [11d] (p9)

16.04 An article published by *The Economist*, dated 4 February 2010, reported that:

"Willie Hofmeyr, head of South Africa's anti-corruption body, the Special Investigating Unit (SIU), said it had identified 400,000 civil servants getting welfare payments to which they were not entitled. A further 6,000 senior government officials had failed to declare their business interests, as required by the law, and were awaiting disciplinary hearings. But the state's ability to convict and punish the guilty was, he said, 'pretty limited and, in some cases, almost completely non-existent'." [24a]

- 16.05 In Transparency International's (TI) 2009 Corruption Perception Index South Africa ranked 55th out of 180 countries worldwide, scoring 4.7 out of 10. (The CPI Score relates to perceptions of the degree of corruption as seen to exist among public officials, politicians, business people, and country analysts. It ranges between 10 (most honest) and 0 (most corrupt). South Africa was the highest rated (and least corrupt) African country after Botswana and Seychelles and was rated as less corrupt than five EU member states, including Italy and Greece. [25a]

Also see the Section 8 – Security Forces for information about Police corruption.

The Freedom House *Countries at the Crossroads 2010* report provides more details on the statutory bodies responsible for combating corruption:

<http://www.freedomhouse.org/modules/publications/ccr/modPrintVersion.cfm?edition=9&ccrpage=43&ccrcountry=197>

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17. FREEDOM OF RELIGION

17.01 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:: “The constitution and law provide for freedom of religion, and the government generally respected this right in practice. ... There were occasional reports of desecration and vandalism or verbal or written harassment directed against religious minorities during the year.” [4b] (Section 2c)

17.02 The US State Department Report on *International Religious Freedom 2009*, published on 26 October 2009, noted that:

“The country has an area of 470,693 square miles and a population of 48.7 million. The 2001 religious demography census estimated that 80 percent of the population is Christian. Hindus, Muslims, Jews, Buddhists, and adherents of traditional African beliefs constitute 5 percent of the population. Approximately 15 percent of the population indicated it adheres to no particular religion or declined to indicate an affiliation. Many combine Christian and indigenous religious practices” [4c]

For more detailed information on religious issues, see the *USSD 2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf

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18. ETHNIC GROUPS

- 18.01 Jane's Sentinel *Country Risk Assessment: South Africa*, updated 22 April 2009, noted that:

"South Africa's diverse population consists of four racial groups: black, white, Asian (mainly Indian) and people of mixed descent ('coloureds'). Each group comprises a number of subgroups speaking distinct languages. After the 2001 population census, South Africa's racial composition changed somewhat in terms of the way people classified themselves. The racial composition recorded in 2001 was as follows: black: 79 per cent; white: 9.6 per cent; coloured 8.9 per cent; and Indian/Asian 2.5 per cent. South Africa's next full census is scheduled for 2011. By mid-2005, the population was estimated to have increased to 46,900,000, by mid-2006 to 47,400,000 and by mid-2007 to 47,700,000.

"The black peoples are subdivided into two large clusters of ethnic groups, the Nguni and the Sotho, and two smaller clusters, the Tsonga and the Venda. All these groups speak languages belonging to the Bantu linguistic family that is widely distributed south of the equator. Although Bantu cultures have many common characteristics, there are regional deviations and the various languages spoken are not necessarily mutually intelligible." [2g] (Demography)

SAN OR KHOISAN*

- 18.02 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

"The NGO Working Group of Indigenous Minorities in Southern Africa estimated that there were approximately 6,000 indigenous San in the country, some of whom worked as farmers or as farm laborers. In the late 1990s, the Khomani, one of the last surviving San communities, reclaimed most of their land rights by lodging a claim with the Commission for the Restitution of Land Rights. By law the San have the same political and economic rights as other citizens; however, the government did not always effectively protect those rights or deliver basic services to the San communities. Their participation was limited due to fewer opportunities, minimal access to education, and relative isolation." [4b] (Section 6)

*San or Khoisan is the preferred name to describe the indigenous hunter-gatherers of southern Africa. (Khoisan, accessed 8 April 2010) [26a] (Nature, 18 February 2010) [27a]

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19. LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS

- 19.01 *Gay Times*, accessed on 8 April 2010, noted that South Africa has a vibrant gay and lesbian scene in all the major cities, but particularly Capetown and Johannesburg. [29a] The website, Gay South Africa (accessed on 23 April 2010), stated that there was a strong and active Lesbian, Gay, Bisexual and Transgender (LGBT) community in the country with a diverse range of resources. The source noted that: "It is now easier to 'come out' [and] find new friends ..." [62a]
- 19.02 The Freedom House report, *Freedom in the World 2010, South Africa*, released in May 2010, commenting on events in 2009, stated that: "South Africa has one of the world's most liberal legal environments for homosexuals. The 2006 Civil Unions Act legalized same-sex marriage, and a 2002 Constitutional Court ruling held that homosexual couples should be allowed to adopt children. Nevertheless, homosexuals are subject to attacks." [11c] (p5)

LEGAL RIGHTS

- 19.03 *Gay Times* continued:

"In 1996 it was the first country ... in the world to enshrine lesbian and gay rights in its Constitution: Clause 9(3) says the state can not unfairly discriminate directly or indirectly against anyone on one or more grounds, including sexual orientation."

"Workplace discrimination against gays and lesbians is illegal under The Labor Relations Act 1995. In 2000 South Africa passed anti-discrimination legislation banning discrimination and incitement to hatred on the grounds of sexual orientation. ... Same-sex adoption was legalized in 2002 and in 2003 the government bowed to pressure and permitted domestic partner benefits. In 2004 The Supreme Court of Appeal ruled that the definition of marriage as being between a man and a woman discriminated unfairly against same-sex couples, and that common law should be developed to take this into account." [29a]

See [Same Sex Marriages](#) for more information.

- 19.04 AVERT noted in its report *Worldwide ages of consent*, last updated 6 April 2010, that the age of consent for male-male sex and female-female sex was 16; the same as male-female sex. [41b]

Detailed information about laws covering civil unions, inheritance, asylum and immigration, parenting and adoption, and other topics regarding LGBT rights can be found via the following web link at GayLawNet: <http://www.gaylawnet.com/laws/za.htm>

Further information about legal rights for the LGBT community can be found in the annexes of the ILGA report *State Sponsored Homophobia*, released in May 2010: http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf

TREATMENT BY, AND ATTITUDES OF, STATE AUTHORITIES

- 19.05 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009) released on 11 March 2010 noted that: "The post-apartheid constitution outlaws discrimination based on sexual orientation, and in 2006 the country legalized same-sex marriage. There were no reports of official mistreatment or discrimination." [4b] (Section 4) However, while the South African constitution prohibits discrimination against people on the basis of their sexuality, a report by ActionAid, published in March 2009, noted that courts often "narrowly interpreted" the law on hate crime as applying to only race and gender, meaning that someone's sexuality was often only considered an aggravating factor during sentencing. The report called for the country's criminal justice system to recognise hate crimes, including corrective rape, as a separate crime category. [58a] (p12 & 16)
- 19.06 Human Rights Watch (HRW) noted in its *World Report 2010: South Africa*, dated 20 January 2010, that:
- "Although South Africa's constitution outlaws discrimination based on sexual orientation, and same-sex marriage has been legalized, gay and lesbian people remain vulnerable [to violence]. ... The South African Human Rights Commission and other NGOs have recommended that the criminal justice system needs to take concerted action to deal with hate crimes in the country, something that the government has yet to do." [6a] (Sexual Orientation and Gender Identity)

SOCIETAL TREATMENT AND ATTITUDES

- 19.07 A report by the Human Sciences Research Council entitled *Pride and Prejudice: Public attitudes toward homosexuality*, published in November 2008, noted that: "Despite guaranteed constitutional freedoms ... South African society is still largely prejudiced rather than accepting of same-sex relations." Noting that, continuing "... incidences of hate crimes against black lesbians and gay-bashing ..." demonstrate that "... constitutional equality ... has not guaranteed the end to social discrimination." [61a]
- 19.08 A report published by ILGA entitled *State Sponsored Homophobia*, released in May 2010, noted that all sections of the country's LGBT community faced homophobic abuse. "South Africa is ranked the 4th country in the world with the highest rate of crimes: every year, there are numerous cases of hate crimes towards LGBTI people ..." The report went on to note that "The abuse is escalating." [75a] (p7)
- 19.09 The Pew Research Center noted in a report on global attitudes, dated 4 October 2007, that in the area of LGBT rights South Africa's societal attitudes lagged behind the liberal principles of the constitution. A survey conducted on whether "society should accept homosexuality as a way of life" found that only 28 per cent were in agreement, compared with 64 per cent who believed that "homosexuality" was not acceptable. The report also noted that between 2002 and 2007 the percentage that were supportive of LGBT rights fell from 37 per cent to 28 per cent. [60a] (p35-36) The Human Sciences Research Council's report noted that a higher proportion of South Africans had a negative attitudes towards lesbians and gays, noting that: "... more than 80% of the

population aged 16 years and above expressed the view that sex between two men or two women could be considered 'always wrong' ..." [61a]

- 19.10 The USSD 2009 report noted: "Rights groups reported that the LGBT community was subject to societal abuses including hate crimes, gender violence targeting lesbians, and killings. The NGO People Opposed to Women Abuse reported that attacks increased during the year and estimated that a lesbian was killed every three months in the country's townships." [4b] (Section 4)

Detailed contextual information about sexuality in South Africa, published by The Kinsey Institute in 2004, can be found via the following link: <http://www.kinseyinstitute.org/ccies/za.php>

Violence against Lesbians

- 19.11 'Corrective rape' continued to be reported with growing frequency across South Africa. A report by ActionAid, published in March 2009, noted that a culture of rape has been "... passed down to younger generations of South African men. Last year a report by South Africa's Human Rights Commission expressed alarm at the 'growing phenomenon of 'corrective rape' in schools across the country, with young boys believing that lesbian girls need to be raped in order to 'correct' their sexual orientation. Support groups now say that rape is fast becoming the most widespread hate crime against lesbian women in townships across South Africa." [58a] (p8)
- 19.12 The same report noted that "Gay rights group Triangle's 2008 research revealed that, while 44% of white lesbians from the Western Cape lived in fear of sexual assault, 86% of their black counterparts felt the same ..." [58a] (p8)
- 19.13 *The Guardian* reported on 12 March 2009 the case of "... Eudt Simelane, former star of South Africa's acclaimed Banyana Banyana national female football squad, who was found [dead] in a creek ... [after having] been gang-raped and brutally beaten before being stabbed 25 times in the face, chest and legs." Simelane was open about her sexuality and campaigned for equality. *The Guardian* stated that one of its correspondents had "... talked to lesbians in townships in Johannesburg and Cape Town who said they were being deliberately targeted for rape and that the threat of violence had become an everyday ordeal." [53b] A recent report by *The Mask*, dated 6 April 2010, detailed the "corrective" rape and brutal attack of a lesbian in Cape Town. The attack, which was the second corrective rape suffered by the victim in less than ten years, led to the four men being "... sentenced to between 10 and 15 years each for the crime, but who were later released early from prison." The article noted that around "... 10 new cases of lesbians being raped are reported every week in Cape Town alone ..." [59a]

See also [Domestic Violence](#) for information about legal recourse for rape.

Intersex and Transgender/sexual persons

- 19.14 An academic discussion website concerned with Intersex and Transgender communities called *Trans-Academics* (accessed 1 June 2010) published an extract of a report entitled *Intersex and transgender activism in South Africa*, published by Liminalis in 2009, which noted that: "South Africa is one of the

most progressive countries worldwide regarding the rights of intersexed and trans* people.” However, the abstract noted that: “Surprisingly the success for formal protection was not achieved through a local ‘mass’ movement of trans* and intersex people against institutions – which one might consider to be necessary in any struggle of acceptance – but began within institutions through the Technical Committee responsible for drafting the Interim Constitution.” [83a]

- 19.15 A report of the 3rd European Conference on Africa Studies – 4 to 7 June 2009, published by the University of Leipzig entitled *Trans* citizenship in the making: the case of South Africa*, noted that:

“The rights of intersexed people were secured in January 2006 through an amendment of section 1 of Act 4 of 2000 (the PEPUA also known as Equality Act: Promotion of Equality and Prevention of Unfair Discrimination Act). After the successful intervention of activist Sally Gross (founder of ISSA: Intersex South Africa) a definition of intersex was inserted through this amendment. Most importantly however it was stated that the term ‘sex’ in the Equality Clause includes intersex.” [84a]

- 19.16 A report published by ILGA entitled *State Sponsored Homophobia*, released in May 2010, noted that all sections of the country’s LGBT community, including the transgender and transsexual community faced homophobic abuse. “South Africa is ranked the 4th country in the world with the highest rate of crimes: every year, there are numerous cases of hate crimes towards LGBTI people.” The report went on to note that “The abuse is escalating.” [75a] (p7)

- 19.17 The NGO group, Intersex South Africa (ISSA), website accessed 1 June 2010, noted that it “... advocates, mediates and provides services for intersex people throughout South Africa.” It continued:

“The objectives of ISSA are to advance intersexed people’s rights through national legislation and service provision for intersexed people and their families. ISSA is responsible for creating open-discussions and workshops on intersexuality for various organisations throughout South Africa.

“A primary goal of Intersex South Africa is to end non-consensual, unnecessary genital surgery of all intersex people.” [85a] (About us)

The ISSA website provides a wide range of information and support contacts for intersex people and their families: <http://www.intersex.org.za/index.html>

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20. DISABILITY

20.01 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

“The law prohibits discrimination on the basis of both physical and mental disability; however, government and private sector discrimination in employment existed. The law mandates access to buildings for persons with disabilities, but such regulations were rarely enforced, and public awareness of them remained minimal. General responsibility for the rights of persons with disabilities fell within the Department of Health, with individual NGOs advocating for the rights of persons with specific disabilities such as blindness.

“The law provides persons with disabilities protection from harassment and, in conjunction with the Employment Equity Act, also provides guidelines on the recruitment and selection of persons with disabilities, reasonable accommodation for persons with disabilities, and guidelines on proper handling of employee medical information. Enforcement of this law was limited. The law also requires employers with more than 50 workers to create an affirmative action plan with provisions for achieving employment equity for persons with disabilities. Persons with disabilities constituted 3.4 percent of the general population, but only an estimated 0.02 percent of the public service workforce. The law does not allow persons with mental disabilities to vote.” [4b] (Section 6)

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21. WOMEN

OVERVIEW

- 21.01 Human Rights Watch (HRW) noted in *World Report 2010: South Africa*, dated 20 January 2010, that:

“South Africa has in place legislation and national mechanisms to address gender inequality, including the introduction of a government ministry dedicated to women, youth, children, and disabled people. Yet the gap between the material status of women and the government's stated commitment remains huge. Levels of violence against women and girls in South Africa are shockingly high.” [6a] (Women's and Girls' Rights)

- 21.02 The Freedom House report, *Freedom in the World 2010, South Africa*, released in May 2010 covering events in 2009, noted:

“Equal rights for women are guaranteed by the constitution and promoted by the Commission on Gender Equality. While the constitution allows the option and practice of customary law, it does not allow such law to supersede the rights assured to women as South African citizens. Nevertheless, women suffer de facto discrimination with regard to marriage (including forced marriage), divorce, inheritance, and property rights. Despite a robust legal framework, domestic violence and rape, both criminal offenses, are serious problems. South Africa has one of the world's highest rates of sexual abuse. In June 2009, a survey by the South African Medical Research Council found that two-fifths of male respondents admitted to being physically violent with a sexual partner, and one-quarter admitted to committing rape. Women are also subject to sexual harassment and wage discrimination in the workplace, and are not well represented in top management positions. However, women hold 45 percent of seats in the National Assembly and lead 5 of 9 provincial governments; the main opposition [Democratic Alliance] DA party is led by Helen Zille, who became premier of Western Cape Province after the 2009 elections.” [11c] (p5)

- 21.03 The Social Institutions and Gender Index, *Gender Quality and Institutions in South Africa*, undated, accessed 1 June 2010, stated that: “In general, white women living in South Africa have equal rights with men, comparable to the situation in the United Kingdom. The end of Apartheid (in 1993) and the African majority's rise to power have led to the introduction of legislation that supports African women. Yet to date, civil law is often ineffective in replacing the prevailing customary law, particularly in rural areas.” [86a]

- 21.04 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that: “A number of governmental bodies, particularly the Gender Commission and the presidential Office of the Status of Women, and numerous NGOs monitored and promoted women's rights.” [4b] (Section 5) However, Human Rights Watch (HRW) noted in *World Report 2010: South Africa*, dated 20 January 2010, that while the country had “... in place legislation and national mechanisms to address gender inequality ... the gap between the material status of women and the government's stated commitment remains huge.” [6a] (Women's and Girls' Rights)

- 21.05 South Africa is a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and to the Convention's Optional Protocol. (United Nations (UN) Treaty Collection, accessed 11 March 2010) [7a]

LEGAL RIGHTS

- 21.06 The website of South Africa's Constitutional Court, accessed 9 April 2010, noted that:

"Women are ... protected by the full range of rights guaranteed in the new Constitution - the rights to life, dignity, privacy and others. But they receive specific protection in section 9, entitled 'Equality'. It says:

“(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.’

“The prohibition of discrimination on the grounds of gender, sex, pregnancy and marital status is clearly intended to protect women. The grounds ‘sex’, which is a biological feature, and ‘gender’, a social artefact, are both included - perhaps unnecessarily. But the result is that this section leaves no doubt that no unfair discrimination based on any feature of being a woman will be tolerated.” [45a]

- 21.07 The Electoral Institute of Southern Africa (EISA), noted in a report published in April 2009, that:

“The Constitution of South Africa (1996) lays down in Article 1 the fundamental values on which the Republic is founded and includes among these non-sexism. The equality clause of the constitution includes a provisor that is aimed at ensuring substantive rather than merely formal equality: ‘Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.’ (1996, Article 9.2.). Though the Constitution does not specify those who have been disadvantaged by unfair discrimination the South African courts have interpreted it to include women.” [46a]

For more information on legal rights with regard to marriage, property ownership and protection from violence, see following subsections.

See also [Political Rights](#) below.

Marriage and divorce

- 21.08 Freedom House noted in its report *Freedom in the World 2009 - South Africa*, dated 16 July 2009, that:

“Equal rights for women are guaranteed by the constitution and promoted by the constitutionally mandated Commission on Gender Equality. While the constitution allows the option and practice of customary law, it does not allow

such law to supersede the rights assured to women as South African citizens. Nevertheless, women suffer de facto discrimination with regard to marriage, divorce, inheritance, and property rights.” [11a]

- 21.09 The website, Paralegal Advice, accessed 9 April 2010, notes that civil marriage “... is a contract between a man and a woman drawn up in terms of the Marriages Act of 1961. According to this contract they agree to live together as husband and wife.” [48a] Marriage and divorce are governed by four Acts of parliament: the Marriage Act, 1961 (Act No. 25 of 1961) with amendments under the Marriage Extension Act, 1997 (Act 50 of 1997). [47a] Customary marriages are regulated under the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) [47b]; and same sex marriages under the Civil Union Act (Act 17 of 2006). [28c]

Customary marriages

- 21.10 The Department of Home Affairs website, accessed 9 April 2010, notes that in 1996 it requested the South African Law Commission to conduct “... an in-depth investigation into the different marriage systems in South Africa ... with a view [to] harmonising the different systems.” The Law Commission’s findings regarding customary marriages resulted in the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) which came into operation on 15 November 2000. [28b] However, marriages conducted before 15 November 2000 are still governed by the legislation in place at the time of marriage “... except that marital power is automatically scrapped”. (Paralegal Advice, accessed 9 April 2010) [48a]
- 21.11 The website of South Africa’s Constitutional Court, accessed 9 April 2010, notes that the ‘Recognition of Customary Marriages Act of 1998’ “... provides for the recognition of customary marriages, specifies the requirements for a valid customary marriage and regulates the registration of customary marriages. It sets out some of the consequences of such a marriage and gives spouses in a customary marriage equal status and capacity. The Act also regulates the dissolution of customary marriages.” [45a]
- 21.12 Details of restrictions applying to customary marriage can be found at the following link to the Department of Home Affairs website: <http://www.services.gov.za/servicesforpeople/Relationships/gettingmarried/customarylawnmarriages.aspx?Language=en-ZA>

Polygamy / Polygyny

- 21.13 Polygyny is the traditional practice where a man has more than one wife [as compared to polygamy which is the practice of marrying more than one spouse]. The practice is common in a number of South African ethnic groups. (Pambazuka News, 4 March 2010) [49a] (Pambazuka News, 25 September 2009) [49b] The Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) which came into operation on 15 November 2000 legalised traditional polygynous marriage for black and Muslim ethnic groups. (Department of Home Affairs, accessed 9 April 2010) [28b]

Same-sex marriages

- 21.14 The Civil Union Act (Act 17 of 2006) allows the “marriage or civil partnership” of same sex couples: the Act came into force on 30 November 2006. (South African Government Information, accessed 9 April 2010) [28c]

See Lesbian, Gay, Bisexual and Transgender Persons [Legal Rights](#) for more information.

POLITICAL RIGHTS

- 21.15 Freedom House noted in *Freedom in the World 2010*, published 1 June 2010, that:

“Equal rights for women are guaranteed by the constitution and promoted by the Commission on Gender Equality. ... The constitution prohibits discrimination based on a range of categories ... State bodies such as the South African Human Rights Commission (SAHRC) and the Office of the Public Prosecutor (OPP) are empowered to investigate and prosecute cases of discrimination.” [11c] (p4-5)

- 21.16 Freedom House continued: “... women hold 45 per cent of seats in the National Assembly, and lead 5 of the 9 provincial governments; the main opposition DA [Democratic Alliance] party is led by Helen Zille, who became premier of Western Cape Province after the 2009 elections.” [11c] (p5)

- 21.17 The Electoral Institute of Southern Africa (EISA), noted in a report published in April 2009, that:

“Voluntary party quotas, combined with a proportional representation electoral system, have played a significant role in improving women's representation at national and provincial levels. After South Africa's first democratic election in 1994 women formed 27.75% of members of the National Assembly, in 1999 it was 30%, in 2004 32.75% and in 2009 it reached 43%. Provincial legislatures followed a similar pattern; 24% women's representation in 1994, 27% in 1999, 32.3%, in 2004 and 41% in 2009. There was, however, considerable variation between the provinces in 2004, with six attaining or surpassing 30% - Gauteng (42.4%), Northern Cape (37%), Limpopo (33%), Northwest (33%), Eastern Cape (31.7%), Mpumalanga (30%) - and three under 30% - Western Cape (28.5%), KwaZulu-Natal (26.2%), Free State (26%). In 2009 there were no provinces under 35%, with representation of women varying between a high of 49% for Limpopo and a low of 36% for kwaZulu-Natal and the Western Cape.” [46a]

- 21.18 EISA also noted that following the ruling African National Congress's (ANC) 52nd National Congress in 2007 it was decided to increase its party leadership quota for women from 33 per cent to 50 per cent. “Half of the party's office bearers are women, including one of the two deputy presidents, as are 16 of the 33 additional Working Committee members.” [46a]

- 21.19 Other sources noted that women held senior positions within important public bodies, such as the police and the judiciary. On 4 August 2009, the Mail and Guardian published an article listing 13 senior female members of the judiciary, including Sisi Khampepe who was tasked with heading the

commission of inquiry into the controversial Directorate of Special Operations (or Scorpions). [77b] The South African Police Service (SAPS) website, accessed 1 June 2010, recorded that the SAPS Women's Network had been launched in October 2003. One of the Network's aims is to "Facilitate mentors for women in the SAPS to help them advance their careers and assist them in becoming fully participating and contributing partners alongside their male counterparts ..." The article noted that there were five senior female SAPS Commissioners who are champions of the Network, including two Deputy National Commissioners. [19b]

The Mail and Guardian publishes an annual Book of Women profiling women in leading positions across the public and private sectors, including law, academia, financial service and science and engineering:
<http://www.mg.co.za/specialreport/sa-book-of-women-2009>

SOCIAL AND ECONOMIC RIGHTS

21.20 The USSD 2009 reported that:

"Discrimination against women remained a serious problem despite their equal rights under the law governing inheritance, divorce, and child custody. Women experienced economic discrimination in areas such as wages, extension of credit, and ownership of land. For example, township housing transfer schemes favored existing titleholders, who tended to be men.

"Many rural areas were administered through traditional patrilineal authorities, such as a chief or a council of elders, who did not grant land tenure to women, a precondition for access to housing subsidies. A constitutional court ruling in June 2008 upholding a tribe's decision to allow Tinyiko Shilubana to succeed her father as chief was criticized by traditional authorities who said the verdict contravened African custom." [4b] (Section 5)

21.21 Freedom House noted in a report dated 16 July 2009 that: "Equal rights for women are guaranteed by the constitution and promoted by the constitutionally mandated Commission on Gender Equality. While the constitution allows the option and practice of customary law, it does not allow such law to supersede the rights assured to women as South African citizens." [11a] However, the USSD 2009 noted that social and economic "discrimination ... remained a serious problem ..." with "... economic discrimination in areas such as wages, extension of credit, and ownership of land. For example, township housing transfer schemes favored existing titleholders, who tended to be men." [4b] (Section 6)

21.22 The USSD 2009 noted that:

"Female farm workers often experienced discrimination, and their access to housing often was dependent on their relationship to male farm workers. ... Many rural areas were administered through traditional patrilineal authorities, such as a chief or a council of elders, who did not grant land tenure to women, a precondition for access to housing subsidies. A constitutional court ruling in June 2008 upholding a tribe's decision to allow Tinyiko Shilubana to succeed her father as chief was criticized by traditional authorities who said the verdict contravened African custom." [4b] (Section 6)

- 21.23 The USSD 2009 went on to note that: “Women, particularly black women, typically had lower incomes and less job security than men.” Unemployment rates among women were also higher than men and women also held substantially less top leaderships positions in business – “... 18.6 percent of executive-level and 14.6 percent of director-level positions.” [4b] (Section 6)

Contraceptives and abortion

- 21.24 SouthAfrica.info, accessed 9 April 2010, noted that: “Abortion was made legal in South Africa with the implementation of the Choice on Termination of Pregnancy Act of 1996. Although 45,449 abortions were performed in state hospitals and clinics in 2001, there is still significant resistance to abortion, based on cultural or religious grounds. ... Private clinics, including Marie Stopes clinics nationwide also offer abortions.” [5c]
- 21.25 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that: “Contraception was widely available, and women could access it for free at government clinics.” [4b] (Section 5)
- 21.26 In 1996 the South African parliament passed the ‘Choice of Termination of Pregnancy Act’ which legalised abortion. A copy of the Act can be found at the following link: <http://www.info.gov.za/acts/1996/a92-96.pdf>

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VIOLENCE AGAINST WOMEN

Societal violence/harassment

- 21.27 Human Rights Watch (HRW) noted in *World Report 2010: South Africa*, dated 20 January 2010, that:
- “South Africa has the highest rates in the world of rape reported to the police. A survey released in June by the Medical Research Council of South Africa found that 28 percent of men surveyed had raped a woman or girl; one in 20 said they had raped a woman or girl in the past year. Arrest and conviction rates of rape perpetrators are extremely low, and consequently women and girls who experience these violations are denied justice, factors that contribute to the normalization of rape and violence against women and girls in South African society. Women and girls who have been raped face numerous obstacles in accessing healthcare and other forms of assistance, such as delays in the provision of medical treatment, an absence of counselling services, and lengthy waits for medico-legal examination. Despite the high rates of rape, many health facilities do not provide post-exposure prophylaxis (PEP) services. NGOs working on women's health rights continue to receive reports from healthcare workers and survivors of rape who have been unable to access timely PEP services in the public health system.” [6a]
- 21.28 The US State Department Report on Human Rights Practices 2009 (USSD 2009), published 11 March 2010, reported that:

“Rape, including spousal rape, is illegal but remained a serious and pervasive problem. The country had one of the highest incidences of rape in the world. According to the 2008-09 SAPS annual report, the number of sexual offenses increased by 12 percent during the year to 71,500 reported cases from 63,818 reported cases in 2008. According to NGOs, rape of elderly women increased. SAPS began recording all sexually related offenses under a single category, as required by amendments to the Sexual Offences Act (SOA) in 2007. Among other provisions, the amendments also expanded the definition of rape to include all forms of sexual penetration without consent irrespective of gender and broadened definitions of sexual assault against children and persons with mental disabilities.” [4b] (Section 5)

- 21.29 The same source noted: “A poor security climate and societal attitudes condoning sexual violence against women contributed to ...” very high rates of rape. Women's NGOs criticised judges for “... using criteria such as the victim's behaviour or relationship to the rapist as a basis for imposing lighter sentences ... only 4.1 percent of reported cases resulted in convictions.” [4b] (Section 5) Amnesty International's *Annual Report 2010*, published on 28 May 2010, noted that: “In November, the Equality Court reserved judgement in a complaint of hate speech brought by the NGO Sonke Gender Justice. The complaint was brought against the ANC Youth League [sic] president [Julius Malema], for public comments which appeared to denigrate women who reported being raped.” [12b] (p4)

- 21.30 The USSD 2009 also noted that

“Although the law prohibits sexual harassment, it remained a widespread problem. The government left enforcement primarily to employers, with criminal prosecution a rare secondary step at the initiative of the complainant. The Department of Labor (DOL) issued guidelines to employers on how to handle workplace complaints, which allowed for remuneration of the victim's lost compensation plus interest, additional damages, and legal fees; and dismissal of the perpetrator in some circumstances. Tougher punishments could be generated for assault, which carries a range of penalties depending on the severity of the act, but only if the complainants press charges.” [4b] (Section 5)

“According to NGOs, about one in four women were in an abusive relationship, but few reported it. A June [2009] report released by the Medical Research Council found that more than two-fifths of men interviewed in KZN [KwaZulu-Natal] and the Eastern Cape Province had been physically violent toward an intimate partner. TCC [Thuthuzela Care Centers] counsellors also alleged that doctors, police officers, and judges often treated abused women poorly.” [4b] (Section 5)

Legal and policy measures

- 21.31 Amnesty International (AI) noted in a report, *‘I am at the lowest end of all’ Rural women living with HIV face human rights abuses in South Africa*, dated 27 March 2008, that In recognising the extent of gender based violence, the government ensured that the country's new constitution would enshrine equal protection regardless of gender. “The South Africa Constitution of 1996 guarantees that everyone has the right to freedom and security of the person,

which includes ‘the right ... to be free from all forms of violence from either public or private sources’.” [12a] (p16-17)

Also see section 22 Children – [Violence against children](#) for related information.

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Domestic violence

- 21.32 The US State Department Report on *Human Rights Practices 2009* (USSD 2009), published 11 March 2010, reported that:

“Domestic violence was pervasive and included physical, sexual, emotional, and verbal abuse, as well as harassment and stalking by former partners. The Domestic Violence Act of 1998 defines victims of domestic violence (including persons who are not in legal or common-law marriages), facilitates the serving of protection orders on abusers, requires the police to take victims to a place of safety, and allows police to seize firearms at the scene and to arrest abusers without a warrant.” [4b] (Section 6)

- 21.33 An expert report prepared by The Centre for the Study of Violence and Reconciliation for a United Nations meeting of the Division for the Advancement of Women, who met on 17-20 May 2005, noted that the ANC government quickly responded to high levels of gender based violence in 1996 by drafting the ‘National Crime Prevention Strategy (NCPS)’ that “... established crimes of violence against women and children as national priority (as status such crimes have continued to enjoy in subsequent national policing strategy documents) and a number of legislative reforms have also been initiated in this area.

“These include mandatory minimum sentence for certain rapes (the Criminal Law Amendment Act, no 105 of 1997); tightening bail conditions for those charged with rape through the Criminal Procedure Second Amendment Act (no 85 of 1997; and passing, in 1998, the Domestic Violence Act (DVA) (no.118 of 1998). National Policy Guidelines for the Handling of Victims of Sexual Offences were also finalised in 1998 and the Policy Framework and Strategy for Shelters for Victims of Domestic Violence in South Africa in 2003 (Department of Social Development, 2003). Specialist facilities have also been set up such as family courts, specialist sexual offences courts and Thuthuzela centres. Thus the first ten years post 1994 have been marked by increasing state intervention into the problem of violence against women.” [13a] (p2)

- 21.34 Amnesty International reported in March 2008 that:

“... under the 1998 DVA, ‘domestic violence’ is defined to include physical, sexual, emotional, verbal, psychological and economic abuse: intimidation, harassment, stalking, damage to property; entry into complainant’s residence without consent where the parties do not share the same residence; or any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to the safety, health or well-being of the complainant.” [12a] (p25-26)

A copy of the Domestic Violence Act can be found here:
<http://www.info.gov.za/view/DownloadFileAction?id=70651>

- 21.35 Freedom House noted in its report *Freedom in the World 2009 - South Africa*, dated 16 July 2009, that the government introduced a new Sexual Offences Act in December 2007. [11a] (p5) The Department of Justice and Constitutional Development noted in its 2008/9 Annual Report that this piece of legislation increases the protection offered to women and makes all government agencies responsible for co-ordinating activities to “eradicate” sexual offences and violence against women. [14a] (p12)
- 21.36 The Commission for Gender Equality (CGE) was set up in 1996 in the first years of the newly elected ANC government. (Harvard School of Public Health, accessed 26 March 2010) [16a] The CGE was tasked to “...advance promote and protect gender equality in South Africa through undertaking research, public education, policy development, legislative initiatives, effective monitoring and litigation.” [15a] (Mission and Vision) The CGE also deals with complaints about gender discrimination. The website noted that it can deal with complaints on the following grounds “... race, sex, pregnancy, marital status, disability, sexual preference, age and trade union, government and private activity.” [15b] (Complaints)
- Further information regarding the CGE can be found at the following website:
<http://www.cge.org.za/>
- 21.37 During 2009 President Jacob Zuma announced the setting up of a new ministry called the ‘Department for Women, Children and Persons with Disabilities’. The new ministry has responsibility for “... co-ordinating ... the advancement and protection of the rights of women ...” with “Priority ... given to transforming societal values and institutions in line with [the] constitutional vision of equality, non sexism, human rights, [and] social justice.” (Parliamentary Monitoring Group, 21 August 2009) [17a]

Protection against and prosecution of gender-based crime

- 21.38 The AI March 2008 report observed: “Although the scale of incidents of sexual and other forms of violence against women remains persistently high ... the state has taken some measures to improve the response of the criminal justice system to these crimes and access to civil remedies in cases of domestic violence.” However, the report warned that further reforms and ongoing review of the effectiveness of current legislation is required. [12a] (p16-17)
- 21.39 The USSD 2009 report noted:
- “The government operated 42 sexual offenses courts throughout the country that included designated waiting rooms and counseling for victims. During the year the NPA's Sexual Offenses and Community Affairs Unit (SOCA) opened seven and operated 17 Thuthuzela Care Centers (TCC) that specialized in rape care management and streamlined a network of existing investigative, prosecutorial, medical, and psychological services in the hospitals where they were located.

“The number of courts for sexual offenses decreased from 64 to 42 during the year. While the NPA made no official statement on the decrease, it did appear to some stakeholders that support for dedicated sexual offenses courts was eroding and that some of the previously dedicated courts were hearing other types of cases. Subsequently, sexual offenses cases took longer to resolve, were harder to track for case managers, and the conviction rate within the sexual offenses courts, which was previously the highest in the country, decreased. The SOCA unit reported a 66.7 percent conviction rate during the year, which was a decrease from previous years, but still higher than the rates reported for other regional courts where convictions in sexual offenses cases averaged less than 50 percent. In their November report to the parliamentary Portfolio Committee on Justice and Constitutional Development, the NPA outlined its desire to increase the number of sexual offenses courts.

“Although judges in rape cases generally followed statutory sentencing guidelines, women's advocacy groups criticized judges for using criteria such as the victim's behavior or relationship to the rapist as a basis for imposing lighter sentences. According to a 2008 study by SAPS and the Centre for the Study of Violence and Reconciliation, only 4.1 percent of reported cases resulted in convictions. One in every eight suspects was under the age of 17. In rape cases involving victims under the age of 16, one of every 10 cases resulted in a conviction.” [4b] (Section 5)

21.40 Amnesty International noted in a report published in March 2008 that: “The National Commissioner of Police in his report to parliament at the end of 2007 acknowledged that the number of complaints against the SAPS for failing to undertake their duties under the DVA had been rising.” Amnesty also noted that: “Nearly ten years after the DVA [Domestic Violence Act] came into force ... there is still evidence that some members of the SAPS do not understand their legal responsibilities or do not feel under sufficient pressure to fulfil them.” [12a] (p29)

21.41 Amnesty International's *Annual Report 2010*, published on 28 May 2010, noted that:

“The ICD [Independent Complaints Directorate] reported to Parliament in February that its inspection of 430 police stations showed many were failing to comply with their obligations under the Domestic Violence Act (DVA). There were also a number of substantiated complaints brought against the police, including failing to arrest the perpetrator for non-compliance with a Protection Order, to advise complainants of their options under the DVA and for ‘chasing away’ complainants.

“NGOs and support organizations reported that the police had not received adequate or in some cases any training on their obligations under the sexual offences and domestic violence laws. By the end of the year, the authorities had established 17 out of the targeted 50 planned one-stop centres for the provision of treatment, support and access to justice for survivors of gender-based violence. In July, the Minister of Police announced he would review the decision to close the specialized family violence and sexual offences units. Research confirmed that the decision in 2006 to close the units led to a deterioration in services and a reduced rate of arrests and convictions.” [12b] (p4)

- 21.42 A report published by South Africa's Auditor General, published in March 2009, looking at police responses to emergency call outs noted that a major criticism of the South Africa Police Service (SAPS) and the judicial system is that both bodies are failing women victims of violence. A report from IPS, dated 18 March 2009, noted that: "Of all perpetrators who stand trial [for rape], only four per cent is convicted." [18a] As a comparison, UK conviction rates over the last two years have been between around 5.5 per cent (Police999, 16 June 2008) [88a] and 6.5 per cent (MailOnline, 15 May 2009) [87a]; however, some regions of the UK such as Leicestershire, recorded conviction rates as low as 2.8 per cent. (BBC News, 7 July 2008) [52g]
- 21.43 Witness protection is a core right for victims of serious crime (including victims of domestic violence) who testify in a court of law (see [Section 8](#) for more information about the witness protection scheme). In addition, victims of domestic violence also have access to a number of different and compatible avenues of protection and assistance; these include Protection Orders and access to short and long-term shelters.
- 21.44 The Department of Justice and Constitutional Development's Annual Report 2008/09 noted that under the terms of the Domestic Violence Act 1998, any person can make an application to the courts for an interim and full protection order. No criminal charges need to be laid before the courts for such a protection order to be granted. [14a] (p13) The USSD 2009 noted that: "Violating a protection order is punishable by a prison sentence of up to five years, or 20 years if additional criminal charges are brought." [4b] (Section 5) The South African NGO 'Abuse Is No Excuse' website provides detailed information about the use of protection orders and how an application could be made.

The following link provides details of the process and how an application can be made: <http://www.abuseisnoexcuse.co.za/restraining-order/legal-process>

State and non-state assistance

- 21.45 A number of sources, including Amnesty International, local NGOs and government websites, noted the existence of domestic violence shelters across each province of South Africa. The shelters provide a range of assistance from short to longer-term accommodation (Centre for the Study of Violence and Reconciliation, 25 November 2008) [13b] and some shelters also offered counselling services, free legal advice and empowerment programmes. (The Saartjie Baartman Centre: Annual Report 2008) [22a] However, the Centre for the Study of Violence and Reconciliation complained in one report dated 25 November 2008 and another published in 2007, that many shelters restricted occupancy to periods of six months or less and that there were too few shelters in rural areas. [13a] (p4) [13b] Amnesty International reported on 27 March 2008 that the government failed to publicise what assistance (including shelter accommodation) was available to victims of domestic violence. [12a] (p29 & 58)
- 21.46 Human Rights Watch noted on 7 June 2009 that: "South Africa has a vibrant and energetic civil society that provides services, undertakes pioneering research and advocates for equality of women." [6b] The following list of links provides information and contact details for women's NGOs and civil society campaigners.

The Mail and Guardian, dated 7 August 2008, provided a list of civic society and Non Governmental Organisations that are involved in women's gender and human rights issues. <http://www.mg.co.za/article/2007-08-01-civil-society-gender-and-human-rights>

United Nations directory of Women's NGOS.
<http://www.un.org/africa/osaa/ngodirectory/dest/Women.htm#SouthAfrica>

The Saartjie Baartman charity has two shelters and a drop in centre in the Western Cape. <http://www.saartjiebaartmancentre.org.za/>

Southern African Regional Poverty Network: Directory of Development Organisations 2006. Includes Women's NGOs.
http://www.sarpn.org.za/documents/d0001795/Country_Dir_South-Africa_2006.pdf

List of Women's associations and NGOs.
<http://www.distel.ca/womlist/countries/southafrica.html>

A COI Service information response, *South Africa – Domestic Violence*, dated 28 January 2010 outlines in more detail the issues surrounding domestic violence (and generally violence against women), including access to shelters and NGO support. The document is available on the Home Office intranet and by request.

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22. CHILDREN

The following should be read in conjunction with the section on Women, particularly with regard to violence against children/women and assistance available.

OVERVIEW

- 22.01 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

“The government was generally committed to children's rights and welfare. The law provides for citizenship by birth, descent, and naturalization. However, registration of births was inconsistent, especially in remote rural areas or among parents who were foreign nationals and themselves unregistered. This resulted in lack of access for children to public services such as education, health care, and financial grants. According to Social Development Minister Edna Molewa, more than nine million children were receiving social welfare grants. The government's 2008 budget extended child support grants from age 14 to 15; however, it was sometimes difficult for children, particularly those in rural areas or without documentation, to obtain access to health care facilities and other programs.” [4b] (Section 6)

- 22.02 South Africa is a signatory to the United Nations (UN) Convention on the Rights of the Child, and the Optional Protocols on the sale of children, child prostitution and child pornography, and the involvement of children in armed conflict. (UN Treaty Database, accessed 26 April 2010) [63a]

- 22.03 The United Nations Children's Fund's (UNICEF) *South Africa Country Profile, November 2009*, noted that out of a population of approximately 50 million, nearly 20 million were children below the age of 18 years. The report also noted:

“Despite significant progress made in the improvement of the well being of children since 1994, much remains to be done to achieve all of the Millennium Development Goals, and realize their rights. With a GDP of 281 billion US\$ and per capita of 5,740 US\$ (current prices) in 2008 it ranks as a middle-income country. However 39 percent of the 49 million population lived below national poverty line in 2008, with women and children affected disproportionately (68 percent of children live in poverty). Income disparities are significant and have persisted over time.” [64a]

Basic legal information

- 22.04 UNICEF noted in a report entitled *A review of children's access to employment based contributory Social Insurance Benefits*, dated May 2008, that:

“Age determines basic legal capacity. From birth to the age of seven years the child is known legally as an infant and has no capacity to perform any juristic act or to litigate. The infant is entitled to various rights, but these rights can only be enforced by a parent or guardian or the Master of the High Court. ... When 18 years of age or older, the person is known as a major and is fully capable of acting and litigating. ... Customary law has been extensively

modified by statute and time, and there is little remaining of it in relation to children. Firstly, the basic principles of customary law have been modified by the courts to exclude the 'inheritance' of children and the Constitution requires the best interests of the child to be the paramount standard in determining all such issues. Secondly, statute has altered a range of fundamental relationships: a customary law wife has equal legal capacity with her husband, the female line may inherit equally to the male and the unmarried mother is the guardian of her child, not her father." [64b]

More information regarding guardianship and a child's status in a customary family setting can be found at the following link:

www.dsd.gov.za/index.php?option=com_docman&task...75&Itemid=39

- 22.05 AVERT noted in the report *Worldwide ages of consent*, updated 6 April 2010, that the age of consent for all in South Africa was 16 years. [41b] The USSD 2009 noted that: "The traditional practice of 'ukuthewala,' the forced [customary] marriage of girls as young as 12 to adult men, continued in remote villages in the Eastern Cape." [4b] (Section 6) However, this practice was against the law. The Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) states that prospective spouses must be above 18 years of age and consent to the marriage. [28d]
- 22.06 The website of the Independent Electoral Commission (accessed 26 April 2010) notes that while all citizens of South Africa are able to register for the electoral roll from the age of 16, they cannot vote until they are 18 years of age. [65a] The BBC reported on 13 March 2010 that the age of criminal responsibility in South Africa was seven years of age. [52f]

See also [Women](#)

LEGAL RIGHTS

- 22.07 The South Africa profile, dated 31 March 2008, published by the Child Rights Information Network (CRIN) note that:

"South Africa became a party to the UN Convention on the Rights of the Child on 16 June 1995. It ratified the African Charter on the Rights and Welfare of the Child on 7 January 2000.

"South Africa's Constitution sets out a bill of rights for everyone, but Section 28 contains specific rights for children. This section has been used to litigate a number of cases where child rights have been breached to the Constitutional court. The Court's interpretation of these rights has led to a growing body of child rights jurisprudence.

"The Constitution is complemented by a national child rights strategy which involves every government department in its implementation.

"Most cases brought before the Constitutional Court have concerned Article 3 of the UN Convention which provides that the best interests of the child should be of paramount importance. This principle is contained in section 28(2) of the South African Constitution." [89a]

VIOLENCE AGAINST CHILDREN

22.08 UNICEF noted in its *South Africa Country Profile*, dated November 2009, that: "Violence against children, including sexual violence, abuse and neglect are a matter of serious concern. In 2008-09 alone violent crimes against children amounted to 48,732. Twenty eight percent (20,141) of all registered sexual offences were against children. Registered crimes against women during the same year were as many as 188,425." [64a] The USSD noted that: "According to the NGO Childline, girls have a one-in-four risk, and boys a one-in-five risk, of being raped before age 16." During the period April - December 2007 the South African Police Service recorded that 843 children "... were killed, and 12,422 were assaulted with intention to do grievous bodily harm." [4b] (Section 6) UNICEF noted that "Conviction rates are unacceptably low." [64a]

22.09 The USSD 2009 went on to note that:

"Although the law prohibits corporal punishment in schools, there were reports that teachers used physical violence to discipline students.

Student-on-student violence, including racially motivated violence, continued to be a major concern of educational authorities and parents. Teacher organizations, parents, and police worked together in the 'Safe Schools Program' to address these problems. Many schools implemented 'Adopt-a-Cop' programs inviting SAPS officers into their schools for training and security ...

"There continued to be reports of rape, sexual abuse, sexual harassment, and assaults of girls at school by teachers, students, and other persons in the school community. The law requires schools to disclose sexual abuse to the authorities; however, administrators often concealed sexual violence or delayed disciplinary action. The level of sexual violence in schools also increased the risk for girls of contracting HIV/AIDS or other sexually transmitted diseases, as well as unwanted pregnancies." [4b] (Section 6)

22.10 The USSD 2009 also noted that people trafficking remained a significant problem with children being one of the main groups subject to exploitation. [4b] (Section 6)

For more information about violence against children, also see the sections on [Trafficking](#) and [Child Labour](#).

CHILDCARE AND PROTECTION

22.11 UNICEF noted in its report looking into children's access to social insurance benefits, dated May 2008, that: "Large numbers of children (orphaned and non-orphaned) are not resident with either of their biological parents, and many are brought up in households separate from their biological siblings." The report noted that the position in July 2006 was as follows:

Living arrangements of children (aged 0-17 years)	National average, including orphans (approx. absolute figures in brackets)	National average – children with both parents alive
Resident with both biological parents	35% (6.3 million)	44%
Resident with mother but not	39% (7 million)	Figure not available

father		
Resident with father but not mother	3% (0.5 million)	Figure not available
Resident with neither biological parent	23% (4.1 million)	17%

[64] (p20)

22.12 The Government, NGOs, and individuals provided a wide range of child care and protection options in South Africa, ranging from government funded (registered) children's homes and fostering services (Department of Social Development, accessed 24 April 2010) [66b], through to NGO and individually funded shelters and homes (registered and unregistered). (Built Environment Support Group, March 2007) [67a] (SOS Children: South Africa, accessed 26 April 2010) [68a]

22.13 The Department of Social Development's website, accessed 24 April 2010, noted that: "Any child who is an orphan, is abandoned by his parents, abused, neglected or has parents who are unable to control him/her can be placed in a children's home after the Commissioner of Child Welfare has declared him/her a child in need of care and has ordered his committal to a children's home." [66b]

The following link provides additional details and links to provincial social work contacts:

http://www.dsd.gov.za/index.php?option=com_content&task=view&id=88

22.14 A presentation by the Built Environment Support Group, dated March 2007, noted that registered child care homes were eligible for "... welfare grants from the Department of Social Welfare and Population Development. Welfare grants are meant to cover the bulk of operational expenses of the registered institution." [66b] The USSD 2009 noted that during the year the government paid more than nine million child social welfare grants [4b] (Section 6) of 250 rand (approx £22) per month. [4b] (Section 7d) "The government's 2008 budget extended child support grants from age 14 to 15 ..." [4b] (Section 6)

22.15 International NGO, SOS Children, accessed 26 April 2010,, noted on its website that it had been active in South Africa since the early 1980s and since that time had set up eight children's villages across the country. Each of the villages provides a range of services and accommodation for orphaned children and single mothers. In addition to accommodation, some of the villages provided educational and occupational training. Others provide nursery schools and HIV/AIDS community based child-care. [68a]

The following links provide some additional details of care homes and orphanages run by NGOs and religious foundations:

<http://www.orphanage.org/>

<http://www.missionfinder.org/orphanages.htm#international>

The following link provides a range of information concerning children's issues and those of the parents, specifically the mother:

<http://www.myggsa.co.za/connect/>

Adoption and Fostering

- 22.16 The Department of Social Development's website (accessed 24 April 2010) noted that: "Any child who is an orphan, is abandoned by his parents, abused, neglected or has parents who are unable to control them can qualify for foster care placement. The child must be under 18 years of age." [66a]

The following link provides additional details and links to provincial social work contacts.

http://www.dsd.gov.za/index.php?option=com_content&task=view&id=93

Child labour

- 22.17 The USSD 2009 stated:

"Child labor is prohibited by law. However, child labor was widespread in informal and agricultural sectors, particularly in the former homeland areas. The law prohibits employment of a child less than 15 years of age. Children over 15 but under 18 are also prohibited from work that places at risk the child's wellbeing, education, physical or mental health, or spiritual, moral, or social development. The government generally enforced child labor laws in the formal sectors of the economy. Underage children were allowed to work in the performing arts if their employer received DOL permission and agreed to follow specific guidelines. ...

"The DOL attempted to employ an estimated 1,000 labor inspectors to investigate reports of violations of child labor and trafficking and to submit any evidence to the SAPS. However, due to a shortage of skilled labor in the country, the DOL reported it was not always able to meet the goal and exact figures were unavailable. Violation of laws regulating child employment is punishable by a maximum prison sentence of three years or a fine of 15,000 rand (\$2,030). In some cases DOL inspectors opted to resolve child labor cases by counselling of employers, parents, and children, or by enlisting the services of professionals in the welfare and education departments. There were reports that inspectors had difficulty gaining access to farms where child labor was reported.

"The government's Child Labor Program of Action integrated the priorities of government ministries to combat child labor with a variety of government financial support mechanisms. However, the single largest factor in reducing child labor remained the government's 250 rand (\$34) per month Child Support Grant to primary care givers of children under the age of 15." [4b] (Section 7d)

EDUCATION

- 22.18 UNICEF noted in its South Africa Country Profile, dated November 2009, that:

"South Africa is on track in achieving the MDG [Millennium Development Goal] 2 on access to primary education. Gross enrolment rate in primary education (grade 1-7) is 98 percent and in secondary (grade 8-12) is 85 percent; the gender parity index is 0.98 and 1.08 respectively suggesting that girls and boys have equitable access to education. Attendance of early childhood

development forms and reception-year are low due to lack of means at household level, insufficient supply and poor quality at institutional level, and lack of appropriate norms and standards at structural level. Net school attendance of children of primary schools age (7 to 13 years) is 98 percent. Despite the high access to education achievement of learners is not up to standard. Systemic evaluation conducted among Grade 3 students in 2007 found very low scores: 36 percent for literacy and 35 percent for numeracy on average. In the same year only 50 per cent of the candidates for Senior Certificate passed.

“Learners-per-teacher ratio is high (31.420), teaching and learning materials are insufficient and inadequate. Educators often have inadequate qualification and low motivation. Poor physical conditions at schools, lack of proper sanitation facilities especially in rural areas, widespread violence in and around schools contribute to drop out and poor performance.” [64a]

22.19 The USSD 2009 noted that:

“The law provides for access to education for disadvantaged children, traditionally black children, through a uniform system for the organization, governance, and funding of schools. It mandates compulsory education from ages seven to 15 and ensures that children cannot be refused admission to public schools due to a lack of funds. However, public education is fee based and the government does not fully subsidize education. Even when children qualified for fee exemptions, low-income parents had difficulty paying for uniforms, books, and supplies. Some children, therefore, were enrolled in school but did not attend.” [4b] (Section 6)

HEALTH AND WELFARE

22.20 The CIA World Fact Book, updated 29 March 2010, noted that the infant mortality rate in South Africa was 19.93 deaths per 1,000 live births. South Africa was ranked 99th out of 224 countries surveyed. [69a] However, a report by UNICEF published in November 2009 stated that the mortality rate was 67 deaths per 1,000 live births; noting that this figure had “... remained almost unchanged for the past two decades.” [64a]

22.21 The UNICEF report continued:

“A 2005 survey found that 18.0 percent, 9.3 percent and 4.5 percent children aged 1-9 years were stunted, underweight and wasted respectively with little progress since 1995. Maternal mortality has increased since the late 1990s. The most recent UN estimate sets the indicator at 400 per 100,000 live births in 2005. AIDS is the leading cause of maternal death accounting for 23 per cent of all deaths. This is happening despite the free health care policy for pregnant women and children less than 6 years of age and the high coverage of services (92 percent ANC one visit, 91 percent skilled attendant deliveries) Around 250,000-300,000 newborns annually are exposed to HIV and thus at risk of being infected through mother-to child transmission. A recent survey found that HIV prevalence among children 2-14 years old declined from 5.6 percent in 2002 to 2.5 percent in 2008, indicating the effectiveness of the national PMTCT programme. In the same year 76 percent of HIV+ pregnant women received Nevirapine, the coverage of PMTCT treatment of new-born babies to HIV+ mothers is lower. In 2009 estimated 1.5 million people aged 15

years and older and approximately 106,000 children would be in need of ART. In March ... [2009] 75,000 children were covered by comprehensive HIV and AIDS treatment.” [64a]

DOCUMENTATION

22.22 The South African Department of Home Affairs website (accessed 8 April 2010) noted that:

“The Act stipulates that the birth of a child born alive must be reported within 30 days after the birth.

“Notice of the birth must be given by one of the parents or, if neither of the parents is able to do so, the person having charge of the child or a person requested by the parents or said person to do so. ...

“Upon registration of a birth, which takes 1 day, an abridged birth certificate is issued free of charge. However, any further issues are subject to submission of a duly completed BI-154 application form and payment of a prescribed fee of R10-00. ...

“Applications for birth certificates should be lodged at your nearest Home Affairs office if applying from within South Africa and at the nearest South African Mission or Consulate if applying from abroad (applications from abroad may take longer depending on the different diplomatic bag dispatch periods).

“Aliens born in South Africa are issued with full certificates free of charge upon registration of their births.” [28e]

Further information can be found at the Department of Home Affairs website: http://www.home-affairs.gov.za/register_birth.asp

See also [Disability](#) and [Medical issues](#)

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23. TRAFFICKING

- 23.01 The US State Department *2009 Human Rights Report* (USSD 2009), published 11 March 2010, reported that:

“The country was a source, transit point, and destination for the trafficking of persons, including children, from other countries in Africa, Asia, and Europe for prostitution and forced labor. Domestic and international organized crime syndicates trafficked women in and out of the country for use in the sex industry, and girls were exploited for sex or domestic servitude. Young men were trafficked internally and across borders chiefly for agricultural work, but also for street vending, crime, begging, and prostitution.” [4b] (Section 6)

- 23.02 The US State Department *2010 Trafficking in Persons Report*, published 14 June 2010, reported that:

“The Government of South Africa does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. During the year, the government convicted its first trafficking offenders, created a Child Protection Strategy at the national and provincial levels, continued developing inter-ministerial operating procedures, and trained officials on the draft anti-trafficking law, victim identification procedures, and agencies' roles in combating trafficking. The government's comprehensive anti-trafficking bill, however, was not passed or enacted, though the government had been promising to pass this legislation since 2008 so it could be fully implemented before the World Cup began in June 2010. In addition, the Children's Amendment Act of 2007, which prohibits child trafficking, has not been fully funded or implemented. Labor trafficking received less official attention than sex trafficking, despite increasing reports of labor trafficking in mines and on farms. Despite the availability of government financial and other resources, the South African government devoted little funding for anti-trafficking law enforcement activity or victim protection compared with the substantial financial and personnel contributions from a large number of foreign donors and NGOs.” [4d]

- 23.03 A senior representative of the United Nations Office of Drugs and Crime (UNODC) stated that the South African government needed to do more to combat the problem of human trafficking in the country. The representative noted that a lack of specific anti-trafficking legislation was seriously hindering law enforcement agencies in their fight against the crime. There have been no convictions for human trafficking in the country. The same article noted that “On Tuesday [16 March 2010] the South African government tabled draft anti-trafficking legislation in its Parliament.” (*People's Daily*, 18 March 2010) [50a]

- 23.04 While there wasn't any specific anti-trafficking legislation in place, the USSD 2009 noted that a number of laws could be applied to trafficking. These included the Prevention of Organised Crime Act of 1998, the Sexual Offences Act (2007), the Children's Act (2005), and Children's Amendment Act of 2007. Sentences of up to 20 years imprisonment can be imposed for offences that included the sale and supply of children, unlawful child labor and sexual exploitation. [4b] (Section 6)

- 23.05 *Business Day*, published 29 March 2010, noted that the government was reported to be in the first stages of developing new policies and legislation for combating human trafficking. [51a]
- 23.06 The USSD 2009 noted that in the run-up to the FIFA Football World Cup, due to be held in South Africa between June and July 2010, the police reported a proliferation of new brothels located near football stadiums. "Many of the new venues undertook recruitment drives, for both willing sex workers and trafficking victims" [4b] (Section 6)

Further information about trafficking can be found in the US State Department Human Rights Reports and People Trafficking Reports:

<http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm>

<http://www.state.gov/g/tip/index.htm>

See also the sections on violence in the section on Women and Violence Against Children

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24. MEDICAL ISSUES

24.01 SouthAfrica.info, accessed 12 April 2010,, noted that:

“South Africa's health system consists of a large public sector and a smaller but fast-growing private sector. Health care varies from the most basic primary health care, offered free by the state, to highly specialised hi-tech health services available in the private sector for those who can afford it. The public sector is under-resourced and over-used, while the mushrooming private sector, run largely on commercial lines, caters to middle and high-income earners who tend to be members of medical schemes (18% of the population), and to foreigners looking for top-quality surgical procedures at relatively affordable prices. The private sector also attracts most of the country's health professionals.

“Although the state contributes about 40% of all expenditure on health, the public health sector is under pressure to deliver services to about 80% of the population. Despite this, most resources are concentrated in the private health sector, which sees to the health needs of the remaining 20% of the population.” [5b]

PUBLICLY FUNDED HEALTH CARE

24.02 SouthAfrica.info, accessed 12 April 2010, noted that: “Public health consumes around 11% of the government's total budget, which is allocated and spent by the nine provinces. How these resources are allocated, and the standard of health care delivered, varies from province to province.” [5b] However, in spite of being stretched financially, the website ‘Just Landed’, accessed 12 April 2010, noted that: “Public hospitals and clinics in South Africa are usually reasonably well equipped and staffed ...but are often very overcrowded ...” [38a]

24.03 Most patients using the public health care system are required to make some payment for services received. SouthAfrica.info, accessed 13 April 2010, noted that patients using public hospitals will pay variable charges based on the individual's circumstances, such as earnings and the number of dependants. For example, somebody who is unemployed will pay R39 (approx £3.50) for a consultation, medication and tests; a pensioner will only pay R13 (approx £1.15) for the same service. However, the source noted that “The government is trying to guide patients away from hospitals to its public clinics and community care centres – where free primary health care services are available.” [5c]

24.04 SouthAfrica.info, accessed 13 April 2010, noted that the public health care system provided a wide range of specialist treatments “... but waiting lists are often very long, depending on the problem or medical procedure needed.” [5c]

24.05 The Economist Intelligence Unit noted in the *South Africa Country Report*: March 2010 that the Government had discussed plans to introduce a ‘national health insurance plan’ but this remained on hold because of the high cost of implementing it in the current economic climate. [31a] (p16)

Medicine availability

- 24.06 In 2006 the Department of Health published the Government's National Drugs Policy for South Africa which provided for an Essential Drugs List and treatment guidelines for health personnel. (Department of Health website, accessed 6 April 2010) [72a] A copy of the National Drugs Policy can be accessed here: <http://www.doh.gov.za/docs/policy/drugsjan1996.pdf>
- 24.07 The Department of Health also published a range of fact sheets and guidelines for various medical conditions, including immunisation and HIV etc. Copies of these documents and links to the Essential Drugs List can be accessed here:

Fact Sheets / Guidelines:

<http://www.doh.gov.za/docs/factsheets/index.html>

Standard Treatment Guidelines and Essential Drugs List for South Africa. Hospital Level Adults: 2006

<http://www.kznhealth.gov.za/edladult06.pdf>

Standard Treatment Guidelines and Essential Drugs List for South Africa. Hospital Level Paediatrics: 2006

<http://www.kznhealth.gov.za/edlpaed06.pdf>

PRIVATE HEALTH CARE

- 24.08 Regarding the quality of private health care services, Insurance company, Allianz, noted on its website, accessed 12 April 2010, that:
- “The standard of healthcare ... is considered the best on the African continent, particularly in the urban and coastal areas. The country has a number of private and public hospitals, nursing homes and clinics. The hospital facilities in Johannesburg are notably impressive. ... Generally speaking, medical facilities ... are very good, especially those in private hospitals. The general practitioners, the nurses and the medical staff are trained at top medical schools in the country. Some of the specialists obtained their medical degrees and underwent training in western countries like the US and the UK.” [35a]
- 24.09 Medical recruitment website, MedHunters, accessed 12 April 2010, noted that: “The private system is excellent: the United Nations ranked South Africa's private system 39 out of 162 nations for technological innovation and achievement. Worldwide, people fly to South Africa for operations, which are relatively cheap because of the country's weak currency.” [36a]
- 24.10 There were two main private healthcare groups in South Africa, Netcare and Medi-Clinic. Both healthcare groups provided a wide range of treatments and care, including specialist treatments such as oncology (cancer treatment), renal care (kidney dialysis etc), cardiology (heart surgery), and organ transplants and associated care. (Netcare website, accessed 16 April 2010) [39b] [39d] [39e] [39f] (Medi-Clinic website, accessed 16 April 2010) [40a]
- 24.11 The Netcare website, accessed 16 April 2010, provided a searchable list of hospitals across all of country's provinces. [39a] The website also provided a list of specialists and facilities by province. [39c]

Hospitals

<http://www.netcare.co.za/8/hospitals/>

Specialists

http://www.netcare.co.za/live/popup.php?Category_ID=63&specialist-opportunities/

HIV/AIDS

- 24.12 International NGO, AVERT, noted in a profile for South Africa, last updated 15 April 2010, that: "An estimated 5.2 million people were living with HIV and AIDS in South Africa in 2008, more than any other country. It is believed that in 2008, over 250,000 South African[s] died of AIDS. National prevalence is around 11% with some groups being particularly affected." [41a] (p1) Amnesty International's *Annual Report 2010*, published on 28 May 2010, reported that the number of people with HIV in South Africa might be as high as 5.7 million. The report noted that 870,000 of these were believed to be receiving antiretroviral treatment (ART) – half of the numbers requiring medication. [12b] (p4)
- 24.13 To demonstrate further the extent of the problem in South Africa, a report published by *The Lancet* on 24 August 2009 noted that South Africa has "... only 0.7% of the world's population ..." but "... 17% of the world's HIV/AIDS cases ... KwaZulu-Natal province is hardest hit with an HIV prevalence of 39.1% ..." [44a] (p5) The Congressional Research Service noted in a report entitled *South Africa: Current Issues and U.S. Relations*, dated 20 May 2009, that while "... experts believe the country's prevalence rates have begun to stabilize, the South African government still faces many challenges in its response to HIV/AIDS." [32a]
- 24.14 However, significantly fewer AIDS related deaths were reported in 2008 compared to 2007. The Congressional Research Service noted that in 2007 South Africa recorded 350,000 AIDS related deaths. [32a] (p9) IRIN Plus News reported on 30 September 2009 that during 2008 the South African government made huge progress in putting more people on Anti Retro Viral (ARV) drugs during 2008 – an increase of 50 per cent between 2007 and 2008. [42a] AVERT noted that this increase resulted in South Africa having "... the largest antiretroviral therapy programme in the world ..." with numbers of deaths from HIV/AIDS falling by 100,000 during 2008. The source noted that figures produced at the end of 2007 showed that around 28 per cent [or close to 1.5 million [41a]] of those with HIV/AIDS were receiving treatment. [41a] (p1 & 5)
- 24.15 The AVERT South Africa profile, updated 15 April 2010, noted that the government's guidelines, last updated in February 2010, state that patients become eligible for ARV therapy once their CD4 count falls below 200 cells/mm³. WHO guidelines recommend that treatment should commence at CD4 counts of 350 cells/mm³. However, government guidelines "... state that for certain groups, such as pregnant women, treatment will begin at <350 cells/mm³." [41a] (p6)
- 24.16 While IRIN Plus News, dated 30 September 2009, noted that the government had increased access to ARVs [42a] and that numbers dying from HIV/AIDS

had fallen, it was pointed out by AVERT that overall the government's slow response to the epidemic had been disappointing. It noted that "... delays in initiating treatment mean that the average starting point of antiretroviral therapy is a CD4 count of 87 cells/mm³ ..." which is well below the government's recommended CD4 count of 200 cells/mm³. For example, it was reported that one "... Johannesburg clinic commence[d] treatment at a CD4 count of 80-100 cells/mm³, a level that has not changed in four years." [41a] (p5-6)

- 24.17 While AVERT noted that the province of Free State had experienced funding problems in November 2008 resulting in new patients being prevented from initiating treatment [41a] (p7); Gauteng Provincial Government announced that it was scaling up the number of anti-retro viral treatment sites in the province from 73 treatment centres to 113. The provincial government announced that the plan will ensure that at least 400,000 individuals will be receiving treatment by March 2011. (BuaNews, 23 February 2010) [43a]
- 24.18 Médecins Sans Frontiers reported in its *International Activity Report 2008 – South Africa* that: "Tuberculosis (TB), including drug-resistant TB (DR-TB), is the main cause of death and illness among those living with HIV/AIDS." [37a] The incidence of TB "... has more than doubled since 2001 with significant numbers of multi-drug resistant TB cases ..." (The Lancet, 24 August 2009) [44a] (p5)
- 24.19 The Department of Social Development's website, accessed 24 April 2010, noted that it provided "... funding and support to organisations that offer a range of services to individuals and families infected and affected by HIV and AIDS. These organisations provide Home-based/Community-based care services to ensure that the basic needs of people living with HIV and AIDS (PLWHAs) are met." The website went on to note that it provided a wide range of services, including:
- Providing effective anti-retroviral drugs (ARVs).
 - Identifying and managing opportunistic infections, including TB.
 - Identifying and treating Sexually Transmitted Infections (STIs).
 - Providing palliative care including home based care (HBC) programmes.
 - Comprehensive mother to child prevention (MTCT), including short course antiretroviral therapy and breast milk substitutes.
 - Providing food parcels and food supplements.
 - Providing trauma and therapeutic counselling.
 - Addressing the needs of child-headed households. [66c]
- 24.20 In addition to the Government's efforts in treating and educating South Africans, a large number of NGOs were active in the country. The following link provides a list of some of these NGOs:
<http://www.ngopulse.org/article/guide-hivaids-ngos-south-africa>
- 24.21 Foreign governments, such as the UK and the US, also provided funding for antiretroviral treatment, testing and preventative education. The United States President's Emergency Plan for AIDS Relief website, accessed 23 March 2010, noted that since 2004 the US government has provided over US\$551 million in funding. [70a] The UK's Department for International Development noted in a briefing entitled *HIV and AIDS in-depth* (accessed 23 March 2010) that the UK government has spent £1.5 billion on HIV and AIDS programmes

between 2005 and 2008. "In June 2008, DfID Secretary of State Douglas Alexander launched the UK government's new AIDS strategy ..." which "... committed £6 billion to improving health systems and services in poor countries up to 2015." [71a] A DfID overview of aid work in South Africa, accessed 1 June 2010, noted that during 2008/9 the UK provided over £40 million in bi-lateral aid, 50 per cent of which was spent on health. [71b]

Children and HIV/AIDS

- 24.22 The AVERT South Africa profile, updated 15 April 2010, noted that: "There are 1.4 million AIDS orphans in South Africa, and it is estimated that the HIV/AIDS epidemic has created half of the country's orphans. Another estimate puts the proportion of maternal orphans – those who have lost their mother – orphaned by AIDS as over 70%. ..." [41a] (p2)
- 24.23 AVERT noted that: "The loss of a parent not only has an immense emotional impact on children but for most families can spell financial hardship. One survey on HIV's impact on households found that, '80% of the sample would lose more than half their per capita income with the death of the highest income earner, suggesting a lingering and debilitating shock of death.'" [41a] (p2)
- 24.24 AVERT noted that mother to child transmission was the second highest transmission route for HIV/AIDS after heterosexual sexual intercourse. "An unacceptably high number of babies, around 70,000, are born with HIV every year, reflecting poor prevention of mother-to-child transmission. ... The Department of Health recommends mothers take the drug zidovudine (AZT), by week 28 and single-dose nevirapine during labour. The infant should take single-dose nevirapine after birth followed by seven days of AZT. The guidelines were issued in 2008 ..." However, the government was criticised for not following WHO guidelines that recommend the additional use of lamivudine during and following birth to reduce the risk of resistance to nevirapine. [41a] (p1-2) More than 32,000 children were receiving ARVs in 2007: this only represented half of those infected with HIV. "However, as of April 2010, [the government announced that] all children with HIV exposure will be tested and all HIV-positive children under 12 months will receive antiretroviral drugs." [41a] (p7) Avert noted (article updated 15 April 2010) that there "... were an estimated 280,000 under-15s living with HIV in 2007, a figure that almost doubled since 2001." [41a]

MENTAL HEALTH

- 24.25 Mental Health provision is governed by the Mental Health Act, 17 of 2002. http://www.justice.gov.za/legislation/acts/2002-017_mentalhealthcare.pdf
- 24.26 The World Health Organisation (WHO) *Mental Health Atlas: Country Profile* on South Africa 2005 reported that the country's mental health policies were formulated in 1997. [73a] It recorded that there were slightly fewer psychiatric beds than compared to the United Kingdom: South Africa reported 4.5 psychiatric beds per 10,000 population, [73a] compared with 5.8 psychiatric beds per 10,000 population in the UK. [73b] However, there was a greater divergence with regard to psychiatrists, psychiatric nurses and psychologists. South Africa recorded 1.2 psychiatrists, 7.5 psychiatric nurses, and 4 psychologists per 100,000 population in 2005. [73a] The UK recorded 11

psychiatrists, 104 psychiatric nurses, and 9 psychologists per 100,000 population in 2005. [73b]

24.27 The *Mental Health Atlas: Country Profile* noted that:

“NGOs are involved with mental health in the country. They are mainly involved in advocacy, promotion, prevention, treatment and rehabilitation. At least 14 support groups are functioning in South Africa. However, 10 areas have no support groups. They rendered assistance in advocacy, providing for basic needs of their members, life skills teaching, crisis intervention and counselling. Rural support groups provide advocacy, treatment and rehabilitation.” [73a]

24.28 The WHO source also lists a number of therapeutic drugs available to treat mental health conditions. [73a] This list is supplemented by the Essential Drugs List for South Africa – a link to the list can be found under Medicine availability above.

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25. FREEDOM OF MOVEMENT

- 25.01 The US State Department *2009 Human Rights Report* (USSD 2009), published 11 March 2010, reported that: "The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice."
[4b] (Section 2d)

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26. FOREIGN REFUGEES

- 26.01 Human Rights Watch noted in a report entitled *No Healing Here*, published 7 December 2009, that:

“South Africa is home to a large, growing and diverse population of migrants who come to South Africa for many reasons. Migration of laborers from neighboring countries to the agricultural and mining sectors dates back to at least the mid 19th century, in both regulated and unregulated forms. The most recent estimates of legally present, foreign-born people in South Africa indicated that approximately one million foreign migrants lived in South Africa, making up 2.3 percent of the total South African population in 2001. ...

“However, the number of undocumented migrants is much higher. An uncounted number of informal cross -border migrants travel to South Africa. Some may travel for short periods of time to buy and sell goods, visit family, or to perform informal labor, while others, seeking greater economic opportunity, fleeing intolerable conditions in their home countries, intend to stay indefinitely. The majority of migrants do not have the means and access to obtain visas and passports and must enter and remain illegally in South Africa. Under South African immigration law, undocumented migrants are deemed to be ‘illegal foreigners’ and can be arrested and deported at any time.

“In addition to cross-border workers and traders, South Africa, during 2008, hosted 256,000 asylum seekers and refugees, including 115,800 Zimbabweans, 33,000 Congolese (from the Democratic Republic of Congo), 27,000 Somalis, 11,000 Ethiopians, and about 15,000 from Bangladesh, Pakistan, and India, of whom 37,000 were recognized refugees.” [6b] (p14)

Detailed information about the situation for migrants in South Africa can be found in the Human Rights Report *No Healing Here*:
<http://www.hrw.org/en/reports/2009/12/02/no-healing-here?print>

- 26.02 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that:

“The government partially cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. The government's policy prohibited encampment of foreign asylum seekers and refugees in favor of free movement and integration of documented migrants into local communities, with guarantees for the right to work and access to social services. While this generally offered greater liberty to foreigners, many NGOs criticized government protection of foreigners as inadequate.” [4b] (Section 2d)

- 26.03 The USSD 2009 noted:

“The law provides for the granting of asylum and refugee status in accordance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the government has established a system for providing protection to refugees. The law also provides for a broader definition of

refugee status to be granted if a person satisfies the definition in the 1969 Organization of African Unity's (now African Union's) Convention Governing the Specific Aspects of the Refugee Problem in Africa.

"In practice the government generally provided protection against the expulsion or return of those recognized as refugees. However, refugee advocacy organizations charged that police and immigration officials abused refugees and asylum seekers and forcefully repatriated some asylum seekers, particularly Zimbabweans. Applicants for asylum and NGOs assisting refugees also reported that immigration authorities sought bribes from those seeking permits to remain in the country. The Department of Home Affairs (DHA) adopted anticorruption programs and punished officials or contracted security officers found to be accepting bribes." [4b] (Section 2d)

FOREIGN WORKERS

26.04 The USSD 2009 reported that:

"The law protects both foreigners and immigrant workers. ... In March 2008 the Commission for Conciliation, Mediation, and Arbitration (CCMA) ruled in favor of a foreign employee whose employment contract had been terminated by Discovery Health Limited when the employee's temporary work permit expired. The CCMA's ruling established that foreign workers are included and protected by the Labor Reform Act." [4b] (Section 7)

ZIMBABWEANS

26.05 Human Rights Watch (HRW) noted in a report entitled *No Healing Here*, published 7 December 2009, that:

"The economic implosion and political oppression in Zimbabwe in recent years has created a large Zimbabwean diaspora of migrants fleeing economic deprivation and political oppression. Whereas traditional Zimbabwean migration patterns tended to be formal (regulated by work contracts and including visas), and circular (repeated border crossings and returns to Zimbabwe), because of recent crises in Zimbabwe, larger numbers of Zimbabweans are now remaining in South Africa without documents, or seeking protection through asylum. By the beginning of 2008 there were probably between one and 1.5 million Zimbabweans in South Africa [The Economist Intelligence Unit's Country Report: South Africa, published in March 2010, estimated that the number of Zimbabwean "refugees" living in the country could be as high as 3 million. [31a] (p5)], most of whom remained in South Africa without visas or documentation of any kind. ...

"Many Zimbabweans, both undocumented migrants and documented asylum seekers, are fleeing persecution, including rampant political violence and routine arbitrary arrests and detention of political opponents of the then ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF). Others are forced to migrate because inflation has made their salaries worth so little that they cannot provide basic needs for their families, or because the breakdown in public sanitation and health systems has put even basic health care out of reach." [6b] (p14-15)

26.06 The USSD 2009 also noted:

“Following concern about the expulsion or return of refugees and asylum seekers to countries where their lives or freedom would be threatened, the government took steps to address these concerns during the year, which were welcomed by some watchdog organizations. On May 1 [2009], the government suspended deportations of Zimbabweans; introduced a 90-day visa-free entry for Zimbabwean nationals and an associated right to work; and proposed a system of longer-term permits, known as special dispensation permits, for Zimbabweans already in the country under the Immigration Act. The proposed permit would allow holders to remain in South Africa for six months and afford the right to education, work, and access to basic health care; however, the permit system had not been implemented by year's end. ...

“Although the law provides for guaranteed access to basic services, education for refugee children, and access to police and courts, NGOs such as Human Rights Watch found that in practice, asylum seekers, migrants, and refugees faced discrimination at health care facilities and by law enforcement representatives.” [4b] (Section 2d)

XENOPHOBIC VIOLENCE

- 26.07 A direct result of the vast inflow of Zimbabweans and other foreign nationals has been a perception among South Africans of foreigners competing for limited resources and jobs, this “... led in May 2008 to xenophobic attacks on Zimbabweans and other immigrants in townships throughout South Africa. Many were rendered homeless and forced to seek shelter in temporary camps established by the South African government, while others chose to return to their country of origin.” (Congressional Research Service, 20 May 2009) [32a] (p20) Médecins Sans Frontiers noted in its *International Activity Report 2008 - South Africa*, that: “Between May and September 2008, there was an upsurge of violence aimed at foreign nationals, which led to 62 deaths and the displacement of more than 100,000 people across the country.” [37a]
- 26.08 The International Organisation for Migration (IOM) noted in a report entitled *Towards Tolerance, Law, and Dignity: Addressing Violence against Foreign Nationals in South Africa*, published in February 2009, that: “Since 1994, hundreds of people have been harassed, attacked, or killed because of their status as outsiders or non-nationals.” [34a] (Introduction)
- 26.09 The UN News Service reported on 20 November 2009 that around 3,000 foreign national migrants, particularly Zimbabweans, sought refuge in government buildings in De Doorns, a farming town one and half hours drive north of Cape Town, after locals attacked them for taking local jobs for lower rates of pay. The article noted that “The incident is the first large-scale xenophobic attack affecting refugees and asylum-seekers in South Africa since May 2008.” [33a]
- 26.10 The *Cape Argus* reported on 28 May 2010 that commentators warned that “South Africa could see a spike in xenophobic violence after next month's World Cup. ... Erwin van der Borgh, Amnesty [International's] Africa director of its international secretariat, said an Amnesty delegation that had visited South Africa in March had found there had been verbal threats and reports of

pamphlets threatening violence against South Africans who were renting out their premises to foreigners.” [76a]

The following link provides detailed information about the main reasons for migration from Zimbabwe to South Africa, both economic and political:

<http://www.hrw.org/en/reports/2008/06/18/neighbors-need-0>

The following links provide detailed information regarding the main areas of violence during 2008:

International Organisation for Migration

[http://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/violence against foreign nationals.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/violence%20against%20foreign%20nationals.pdf)

UNHCR

<http://www.unhcr.org/refworld/docid/4bc6e61c2.html>

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27. CITIZENSHIP AND NATIONALITY

27.01 The South African Department of Home Affairs website, accessed 8 April 2010, noted that:

“The acquisition, loss, deprivation and resumption of South African citizenship are regulated by the South African Citizenship Act, 1995 (Act 88 of 1995), hereinafter referred to as ‘the Act’, and the Regulations issued in terms of the Act.

“There are three main forms of South African citizenship, namely citizenship by birth, descent or naturalisation:

Birth (Section 2)

“In terms of the Act, a child born in South Africa and of which one of the parents was a South African citizen or South African permanent residence holder at the time of the child’s birth shall be a South African citizen by birth in the case of births from 6 October 1995 when the Act came into operation. The position before that was governed by the South African Citizenship Act, 1949, which contained a wide range of different requirements over the years. To determine a person’s claim to South African citizenship in respect of births in that era, completion of a BI-529 (Determination of Citizenship Status) is normally required.

“A foreign child born in South Africa and who is adopted in terms of the Child Care Act, 1983 by a South African citizen and whose birth has been registered in South Africa is also a South African citizen by birth.

“A foreign child born in South Africa and who has no claim to another citizenship (stateless) may also acquire South African citizenship by birth. Conclusive proof that the child has no other citizenship, or claim to any other citizenship is required in such cases.

Descent (Section 3)

“A child born outside South Africa and of which at least one of the parents was a South African citizen at the time of the child’s birth has a claim to South African citizenship by descent. The child’s birth must, however, be registered in South Africa for the child to acquire South African citizenship.

Naturalisation (Section 5)

“Foreigners wishing to acquire South African citizenship may apply for South African citizenship by naturalisation, provided the requirements of section 5 are met.” [28a]

For more detailed information on citizenship and nationality, see the 2009 Citizenship Law in Africa by the Open Society Justice Initiative at http://www.soros.org/initiatives/justice/focus/equality_citizenship/articles_publications/publications/citizenship_20091009/a_citizenship_20091009.pdf

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28. OFFICIAL DOCUMENTATION

The following section provides information regarding the most commonly used identity documents in South Africa. The section also notes whether these documents are forged or can be fraudently obtained.

BIRTH CERTIFICATES

- 28.01 Regarding the procedure for the issuance of birth certificates, the South African Department of Home Affairs website, accessed 1 June 2010, states that:

“Notice of birth: The Act stipulates that the birth of a child born alive must be reported within 30 days after the birth. Notice of the birth must be given by one of the parents or, if neither of the parents is able to do so, the person having charge of the child or a person requested by the parents or said person to do so. A person requested to give notice must have a written mandate to do so which must also include the reasons why the parents cannot give notice themselves. ...

Certificates: Upon registration of a birth, which takes 1 day, an abridged birth certificate is issued free of charge.” [28i]

- 28.02 The website continued, noting that late registrations of births was possible, but was “... subject to stricter measures. Three categories of late registrations are distinguished, namely:

- “Notices after 30 days, but before one year ...
- Notices after one year, but before 15 years ...
- Notices after 15 years ...” [28i]

The following link provides additional details and links to birth certificate applications forms:

http://www.home-affairs.gov.za/register_birth.asp

- 28.03 Regarding the possibility of obtaining illegal fraudulent official documents, the South African newspaper, *The Times*, published on 10 February 2008, noted that: “... Home Affairs officials could be bribed to produce genuine South African identity documents and passports.” [80a]

ID CARDS

- 28.04 Capegateway, the official government website of the Western Cape Province, accessed 1 June 2010, noted that South Africa’s official identity card is called an ‘ID Book’. The ID Book is available to all South African citizens who are 16 years or older. “Immigrants who have valid permanent residence permits can also get an ID. A temporary identity document serves as proof of your identity while you are waiting for your application for an ID to be processed. This document is only valid for a short period.” [20b]
- 28.05 Carrying an ID book does not appear to be mandatory, although the African National Congress’s (ANC) website, accessed 1 June 2010, has produced a fact sheet encouraging South Africans to apply for an ID book. The factsheet

states that the ID book allows access to the following services and rights: Applications for permanent employment and unemployment insurance benefits; social grants from the Government, such as child support, old age and disability grants; certain types of health care, housing, and access to electricity and water; opening of bank accounts; voter registration and applications for passports. [79a]

- 28.06 The ID book is described as green and contains a unique bar-code. (*Mail and Guardian*, 23 February 2010) [77a] The following image is an example of the inside pages of an ID book:



(Mype.co.za, accessed 1 June 2010) [78a]

- 28.07 *The Mail and Guardian* reported on 23 February 2010 the Deputy Minister of Home Affairs complaining that the ID Book was "... easily forged, creating problems for his department. 'Even the process to apply for it has so many loopholes. That's why we cannot make progress [with the smart identity card]'." [77a]
- 28.08 The South African Department of Home Affairs website, accessed 1 June 2010, provides a portal for following the application process and verifying official documents such as:
- Enquire on your ID book application status
 - Enquire on your Passport book application status
 - Verify your marital status online
 - Verify ID status online (Alive/Deceased)
 - Enquire on your Permits application status

The portal can be accessed via the following link: http://www.home-affairs.gov.za/enquiry/get_status.asp

PASSPORTS

- 28.09 The South African Department of Home Affairs website, accessed 1 June 2010, states on its 'Passports and Travel Documents' page that a standard South Africa Tourist Passport is valid for 10 years and is usually only issued to a citizen of the country. Non citizens (i.e. permanent residence holders and stateless persons) can also obtain a South African Passport, but this is only valid for 5 years. [28f]

The following link provides details of other passport types available, such as Emergency Travel Certificate etc:

http://www.home-affairs.gov.za/sa_passports_travdocs.asp

- 28.10 The application for a passport notes the following requirements for issuance:

"1(e) A Passport or Travel Document can only be issued to an applicant who is in possession of an identity number. Applicants must submit their identity documents ... If not in possession of an identity document, an applicant must accompany the application for a passport or travel document.

1(f) A full set of fingerprints (or thumbprint, as the case may be) is required from all applicants 16 years and older. In addition to the applicant's left thumbprint on the front page thereof, a full set of fingerprints will be required in an applicant's fingerprints are not on the Population Register yet."

"6 ... a birth certificate, naturalisation certificate or any other document may be requested in order to substantiate any statement made in the application."
(South African Department of Home Affairs, accessed 1 June 2010) [28g]

A copy of the passport application can be found here: <http://www.home-affairs.gov.za/documents/bi-73.pdf>

- 28.11 A notice published on the website of the South African Department of Home Affairs, dated 8 April 2009, noted that it was rolling out a new high security passport with improved security features. The department noted that the measures were being introduced to combat forgery. "The previous South African Passport remains valid until its expiry date or it runs out of pages." [28h] In addition, a report published in South African newspaper, *The Times*, published on 10 February 2008, noted that corrupt Home Affairs officials had been responsible for issuing illegal passports in a "... multi-national people-smuggling conspiracy ..." While the Home Affairs officials were prosecuted the article noted that the scale of the fraudulently issued passports was difficult to gauge. [80a]

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29. EXIT AND RETURN

- 29.01 The US State Department *2009 Human Rights Report: South Africa* (USSD 2009), published 11 March 2010, reported that: "The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. ... The law does not prohibit forced exile; however, the government did not use it." [4b] (Section 2d)
- 29.02 The South African Department of Home Affairs website, accessed 21 April 2010, provides a list of countries whose citizens are exempt from visa control. http://www.home-affairs.gov.za/visa_schedule.asp

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30. LAND REFORM

- 30.01 The Congressional Research Service noted in a report entitled *South Africa: Current Issues and U.S. Relations*, dated 20 May 2009, that:

“In order to address historic injustices, the South African government began a land reform program in the late 1990s to restore land rights to those forcibly dispossessed of their land under racially discriminatory apartheid legislation. The government set a number of targets, including the settlement of all land claims by the end of 2008 and the more ambitious transfer of 30% of agricultural lands owned by whites in 1994 to African owners by 2014. While the government’s ‘willing buyer, willing seller’ land reform policies have reportedly met with little resistance from white landowners, and the Land Affairs Department reports that almost all land claims have been settled, critics charge that the transfers are going too slowly.” [32a] (p11-13)

- 30.02 The slow pace of land reform (Congressional Research Service, 20 May 2009) [32a] (p11-13) led the government to announce in March 2010 that it would be speeding up land reform with “... proposals to nationalise productive farmland as a ‘national asset’.” (*The Times*, 28 March 2010) [55a] BuaNews reported on 24 March 2010, that the Minister for Rural Development and Land Reform admitted that “... the majority of ... 6 million hectares of land that had been transferred to emerging farmers ... had not created any economic benefits for the thousands of new owners.” Noting that “... unless the current form of the willing buyer and willing seller legislation is changed, South Africa will not achieve equitable access and sustainable land use.” The minister stated that he was proposing “... a major overhaul of the country’s land restitution and redistribution policy ...” which will see state land leased to farmers with limits placed on the extent of foreign ownership to freehold land. Foreign ownership of land will be “... linked to productivity and partnership models with South African citizens.” [43b]

- 30.03 However elements within the governing ANC have been pushing for a quicker resolution to the land reform issue. The Congressional Research Service noted that: “In a 2005 speech on the perceived slow pace of land transfers, then-Deputy President Mlambo-Ngcuka said that South Africa might learn from Zimbabwe’s land reform process, igniting considerable controversy. ... The media reported a similarly controversial discussion document circulated by the Land Affairs Department suggesting replacing the ‘willing buyer, willing seller’ approach with a ‘Zimbabwean model,’ ...” where the government would have first refusal on any land, but where owners would be unable to sell to anyone else. [32a] (p11-13)

- 30.04 *The Guardian* reported on 8 April 2010 that in a move that has further raised the profile of land reform, “Julius Malema, president of the youth wing of the African National Congress ... [has] praised Robert Mugabe’s [President of Zimbabwe] ZANU-PF party ...” [53a] specifically the country’s land reform programme, stating that “... Zimbabwe’s land reform programme was a success that South Africa should emulate ...” Also stating that “... South Africa needed to be aggressive and militant ...” in its redistribution of land. (ZimOnline, 9 April 2010) [56a]

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Annex A: Chronology of events

The following Information is from the British Broadcasting Corporation (BBC) Timeline: South Africa, 20 January 2010 [52a] unless otherwise stated.

- 1652** Jan van Riebeeck, representing the Dutch East India Company, founds the Cape Colony at Table Bay.
- 1795** British forces seize Cape Colony from the Netherlands. Territory is returned to the Dutch in 1803; ceded to the British in 1806.
- 1816** Shaka Zulu founds and expands the Zulu empire, creates a formidable fighting force.
- 1835** Boers leave Cape Colony in the 'Great Trek' and found the Orange Free State and the Transvaal.
- 1850s** Boers proclaim the Transvaal a republic.
- 1877** Britain annexes the Transvaal.
- 1879** British defeat the Zulus in Natal.
- 1880-1** Boers rebel against the British, sparking the first Anglo-Boer War. Conflict ends with a negotiated peace. Transvaal is restored as a republic.
- 1880s** Gold is discovered in the Transvaal, triggering the gold rush.
- 1899** British troops gather on the Transvaal border and ignore an ultimatum to disperse. The second Anglo-Boer War begins.
- 1902** Treaty of Vereeniging ends the second Anglo-Boer War. The Transvaal and Orange Free State are made self-governing colonies of the British Empire.
- 1910** Formation of Union of South Africa by former British colonies of the Cape and Natal, and the Boer republics of Transvaal, and Orange Free State.
- 1912** Native National Congress founded, later renamed the African National Congress (ANC).
- 1913** Land Act introduced to prevent blacks, except those living in Cape Province, from buying land outside reserves.
- 1914** National Party founded.
- 1918** Secret Broederbond (brotherhood) established to advance the Afrikaner cause.
- 1919** South West Africa (Namibia) comes under South African administration.
- 1948** Policy of apartheid (separateness) adopted when National Party (NP) takes power.

- 1950** Population classified by race. Group Areas Act passed to segregate blacks and whites. Communist Party banned. ANC responds with campaign of civil disobedience, led by Nelson Mandela.
- 1960** Seventy black demonstrators killed at Sharpeville. ANC banned.
- 1961** South Africa declared a republic, leaves the Commonwealth. Mandela heads ANC's new military wing, which launches sabotage campaign.
- 1964** ANC leader Nelson Mandela sentenced to life imprisonment.
- 1966** **September:** Prime Minister Hendrik Verwoerd assassinated.
- 1970s** More than 3 million people forcibly resettled in black 'homelands'.
- 1976** More than 600 killed in clashes between black protesters and security forces during uprising which starts in Soweto.
- 1984-9** Township revolt, state of emergency.
- 1989** FW de Klerk replaces PW Botha as president, meets Mandela. Public facilities desegregated. Many ANC activists freed.
- 1990** ANC unbanned, Mandela released after 27 years in prison. Namibia becomes independent.
- 1991** Start of multi-party talks. De Klerk repeals remaining apartheid laws, international sanctions lifted. Major fighting between ANC and Zulu Inkatha movement.
- 1993** Agreement on interim constitution.
- 1994** **April:** ANC wins first non-racial elections. Mandela become president, Government of National Unity formed, Commonwealth membership restored, remaining sanctions lifted. South Africa takes seat in UN General Assembly after 20-year absence.
- 1996** Truth and Reconciliation Commission chaired by Archbishop Desmond Tutu begins hearings on human rights crimes committed by former government and liberation movements during apartheid era.
- 1996** Parliament adopts new constitution. National Party withdraws from coalition, saying it is being ignored.
- 1999** ANC wins general elections, Thabo Mbeki takes over as president.
- 2000** **December:** ANC prevails in local elections. Recently-formed Democratic Alliance captures nearly a quarter of the votes. The Inkatha Freedom Party wins 9%.
- 2001** **April:** 39 multi-national pharmaceutical companies halt a legal battle to stop South Africa importing generic Aids drugs. The decision is hailed as a victory for the world's poorest countries in their efforts to import cheaper drugs to combat the virus.

- 2001 May:** An official panel considers allegations of corruption surrounding a 1999 arms deal involving British, French, German, Italian, Swedish and South African firms. In November the panel clears the government of unlawful conduct.
- 2001 December:** High Court rules that pregnant women must be given Aids drugs to help prevent transmission of the virus to their babies.
- 2002 April:** Court acquits Dr Wouter Basson - dubbed "Dr Death" - who ran apartheid-era germ warfare programme. Basson had faced charges of murder and conspiracy. ANC condemns verdict.
- 2002 July:** Constitutional court orders government to provide key anti-Aids drug at all public hospitals. Government had argued drug was too costly.
- 2002 October:** Bomb explosions in Soweto and a blast near Pretoria are thought to be the work of right-wing extremists. Separately, police charge 17 right-wingers with plotting against the state.
- 2003 May:** Walter Sisulu, a key figure in the anti-apartheid struggle, dies aged 91. Thousands gather to pay their last respects.
- 2003 November:** Government approves major programme to treat and tackle HIV/Aids. It envisages network of drug-distribution centres and preventative programmes. Cabinet had previously refused to provide anti-Aids medicine via public health system.
- 2004 April:** Ruling ANC wins landslide election victory, gaining nearly 70% of votes. Thabo Mbeki begins a second term as president. Inkatha Freedom Party leader Mangosuthu Buthelezi is dropped from the cabinet.
- 2005 March:** Investigators exhume the first bodies in a Truth and Reconciliation Commission investigation into the fates of hundreds of people who disappeared in the apartheid era.
- 2005 June:** President Mbeki sacks his deputy, Jacob Zuma, in the aftermath of a corruption case.
- 2006 May:** Former deputy president Jacob Zuma is acquitted of rape charges by the High Court in Johannesburg. He is reinstated as deputy leader of the governing African National Congress.
- 2006 September:** Corruption charges against former deputy president Zuma are dismissed, boosting his bid for the presidency.
- 2006 December:** South Africa becomes the first African country, and the fifth in the world, to allow same-sex unions.
- 2007 May:** Cape Town mayor Helen Zille is elected as new leader of the main opposition Democratic Alliance (DA).

- 2007 June:** Hundreds of thousands of public-sector workers take part in the biggest strike since the end of apartheid. The strike lasts for four weeks and causes widespread disruption to schools, hospitals and public transport.
- 2007 December:** Zuma is elected chairman of the ANC, placing him in a strong position to become the next president. Prosecutors bring new corruption charges against him.
- 2008 May:** Wave of violence directed at foreigners hits townships across the country. Dozens of people die and thousands of Zimbabweans, Malawians and Mozambicans return home.
- 2008 September:** A judge throws out a corruption case against ruling ANC party chief Jacob Zuma, opening the way for him to stand as the country's president in 2009. President Mbeki resigns over allegations that he interfered in the corruption case against Mr Zuma. ANC deputy leader Kgalema Motlanthe is chosen by parliament as president.
- 2008 December:** A new political party is launched in Bloemfontein, in the first real challenge to the governing ANC. The Congress of the People - or Cope - is made up largely of defectors from the ANC and is headed by former defence minister Mosiuoa Lekota.
- 2009 January:** Appeals court rules that state prosecutors can resurrect their corruption case against ANC leader Jacob Zuma, opening the way for Mr Zuma's trial to be resumed, just months before general election.
- 2009 April:** Public prosecutors drop corruption case against Jacob Zuma. ANC wins general election.
- 2009 May:** Parliament elects Jacob Zuma as president. Economy goes into recession for first time in 17 years.
- 2009 July:** Township residents mount violent protests in protest at poor living conditions.
- 2009 August:** Mr Zuma announces 2.4bn rand (\$300m) relief scheme for workers facing redundancy.
- 2010 March:** Julius Malema, leader of the ANC Youth League, was investigated by the South African Human Rights Commission for singing the independence struggle song, 'shoot the boers' at a political meeting. [54a] Later in the month the High Court ordered Mr Malema to stop the independence struggle song. [31b]
- 2010 April:** Eugene Terreblanche, the leader of the right-wing Afrikaner Weerstandsbeweging (Afrikaner Resistance Movement - AWB), was killed on his farm outside the town of Ventersdorp in South Africa's North West Province. [52c]

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Annex B: Political organisations

The following is taken from Jane's *Sentinel Country Risk Assessments - South Africa*: Internal Affairs last updated 21 May 2009 [2e] unless otherwise stated.

African National Congress (ANC)

Founded as the South African Native National Congress (SANNC) in January 1912, the ANC is South Africa's oldest party.

Leader: Jacob Zuma

Democratic Alliance (DA)

The Democratic Party, formed in 1989, is successor to the Progressive Party (PP), which broke away from the United Party (UP) in 1959.

Leader: Helen Zille

Congress of the People (COPE)

COPE was born out of divisions within the ruling ANC, which came to a head when the ruling party recalled Mbeki as president in September 2008.

Leader: Mosiuoa Lekota

Inkatha Freedom Party (IFP)

In 1975 Chief Mangosuthu Buthelezi revived the Zulu cultural movement, Inkatha yeNkululeko ye Sizwe, and transformed it into a political movement, first known as Inkatha and later as the Inkatha Freedom Party (IFP).

Leader: Chief Buthelezi

New National Party (NNP)

The National Party (NP) was founded in 1914 to oppose the ruling South African Party (SAP) of Generals Louis Botha and Jan Smuts and to promote white Afrikaner nationalism. The party disbanded in March 2006, but re-launched itself as the National Party in 2008.

United Democratic Movement (UDM)

The largest of the smaller parties is the UDM, co-founded in 1997 by Roelf Meyer, of the former National Party, and Bantu Holomisa (ANC).

Leader: Bantu Holomisa

Freedom Front Plus (FF+)

The FF split from the Afrikaner-oriented Conservative Party (CP) before the 1994 elections because the CP refused to participate in the elections.

Leader: Pieter Mulder

Independent Democrats (ID)

The party was founded by Patricia de Lille, a popular MP of the PAC, who broke away from the PAC during the floor-crossing opportunity for politicians in 2003.

Leader: Patricia de Lille

African Christian Democratic Party (ACDP)

Having been founded in 1993 to promote Christian principles in national life, the ACDP has a multi-racial support base that has resulted in modest electoral growth.

Leader: Rev Dr Kenneth

United Christian Democratic Party (UCDP)

The UCDP was formed in the 1980s by Lucas Mangope, after the collapse of the Bophuthatswana independent homeland that he had governed.

Leader: Lucas Mangope

Pan-Africanist Congress (PAC)

The oldest of the smaller parties is the Pan-Africanist Congress of Azania, also known as the Pan-Africanist Congress (PAC), which broke away from the ANC in 1959 and was banned, along with the ANC and other movements, in 1960.

Leader: Letlapa Mphahlele

Minority Front (MF)

The MF, led by veteran politician Amichand Rajbansi, a survivor from the Indian House of Delegates in the apartheid era, has its main support base in the KwaZulu-Natal urban areas where South Africa's Asian population is concentrated.

Leader: Amichand Rajbansi

Azanian People's Organisation (AZAPO)

AZAPO emerged from the Black Consciousness Movement in the apartheid era.

Leader: Mosibudi Mangena

See also [Political system](#) and [Political affiliation](#)

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Annex C: Prominent people

Principal Government Officials

State President
Executive Deputy President

Jacob Zuma
Kgalema Motlanthe

Ministers

Agriculture, Forestry and Fisheries
Arts and Culture
Basic Education
Communications
Correctional Services
Defence and Military Veterans
Economic Development
Energy
Finance
Health
Higher Education and Training
Home Affairs
Human Settlements
International Relations and Cooperation
Justice and Constitutional Development
Labour
Mining
Police
Public Enterprises
Public Service and Administration
Public Works
Rural Development and Land Reform
Science and Technology
Social Development
Sport and Recreation
State Security
Tourism
Trade and Industry
Transport
Water and Environmental Affairs
Cooperative Governance and Traditional Affairs
Women, Youth, Children & Disabilities
National Planning Commission
Performance Monitoring and Evaluation
(USSD Background Note: South Africa, February 2010) [4a] (p7)

Tina Joemat-Pettersson
Lulu Xingwana
Angie Motshekga
Siphiwe Nyanda
Nosiviwe Mapisa-Nqakula
Lindiwe Sisulu
Ebrahim Patel
Dipuo Peters
Pravin Gordhan
Aaron Motsoaledi
Blade Nzimande
Nkosazana Dlamini-Zuma
Tokyo Sexwale
Maite Nkoana-Mashabane
Jeff Radebe
Membathisi Mdladlana
Susan Shabangu
Nathi Mthethwa
Barbara Hogan
Richard Baloyi
Geoff Doidge
Gugile Nkwinti
Naledi Pandor
Edna Molewa
Makhenkesi Stofile
Siyabonga Cwele
Marthinus van Schalkwyk
Rob Davies
Sbusiso Joel Ndebele
Buyelwa Sonjica
Sicelo Shiceka
Noluthando Mayende-Sibiya
Trevor Manuel
Collins Chabane

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Annex D: List of abbreviations

AI	Amnesty International
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
FCO	Foreign and Commonwealth Office (UK)
FH	Freedom House
GDP	Gross Domestic Product
GNI	Gross National Income
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HRW	Human Rights Watch
IDP	Internally Displaced Person
IOM	International Organization for Migration
MP	Minister of Parliament
NGO	Non Governmental Organisation
OCHA	Office for the Coordination of Humanitarian Affairs
STD	Sexually Transmitted Disease
TI	Transparency International
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
USSD	United States State Department
WFP	World Food Programme
WHO	World Health Organization

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